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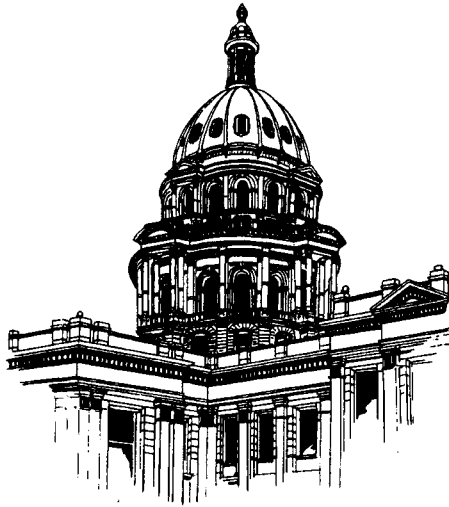
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Study of Criminal Restitution In Colorado

**Report to the
COLORADO
GENERAL ASSEMBLY**

**Colorado Legislative Council
Research Publication No. 467
November 1999**

RECOMMENDATIONS FOR 2000

**STUDY OF CRIMINAL RESTITUTION
IN COLORADO**

**Report to the
Colorado General Assembly**

**Research Publication No. 467
November 1999**

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November 1999

To Members of the General Assembly:

Submitted herewith is the final report of the Study of Criminal Restitution in Colorado, required by section 16-11-101.5 (6) (a), C.R.S., enacted by House Bill 99-1254. Legislative Council staff was directed to study and make recommendations regarding the assessment, collection, and distribution of criminal restitution in Colorado. This report presents the analyses and recommendations required of Legislative Council staff by House Bill 99-1254.

Respectfully submitted,

Charles S. Brown
Director

CB/CJ/rm

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STUDY OF CRIMINAL RESTITUTION IN COLORADO

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STUDY OF CRIMINAL RESTITUTION IN COLORADO

**Legislative Council Staff would like to acknowledge the following
persons for their participation in this study.**

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Special thanks to Ross Machurek for assistance with format, design, and typing.

EXECUTIVE SUMMARY

Findings and Recommendations

House Bill 99-1254 directed the Legislative Council staff to conduct a study of criminal restitution in Colorado. The bill directed staff to consult with various state departments and other agencies in conducting the study. Each legislatively mandated study topic, a summary of the findings, and a recommendation on that topic follows.

(I) *Examine existing restitution statutes to identify inconsistencies.* Current statutes regarding restitution are scattered throughout various titles in the Colorado Revised Statutes (C.R.S.). To further complicate matters, some of the statutes are in conflict with each other. In order to rectify these issues, the work group recommends the following:

- the statutes regarding restitution should be located in one section in order to facilitate the establishment of programs and procedures to provide for and collect full restitution for victims of crime in the most expeditious manner (see page 21);
- a legislative declaration should clearly state the purpose of restitution and should clearly state the General Assembly's intent that restitution be ordered, collected, and disbursed to victims of crime (see page 21);
- there should be one definition of victim with regards to restitution which clearly states the parties to be included by courts as victims (see page 21);
- there should be one definition of restitution which clarifies the specific kinds of monetary losses suffered by victims the court is to include in orders of restitution (see page 22); and
- the statutes should clarify that offenders sentenced to jail be ordered by the court to pay restitution (see page 65).

Other statutory inconsistencies are addressed under other headings in this executive summary.

(II) *Examine methods of assessment to determine consistency of assessment.* The work group considered the issue of whether offenders are consistently assessed restitution. More specifically, the work group considered whether judges assess restitution in all cases and whether judges always have the necessary information in order to assess restitution.

The work group also reviewed current statutes regarding juveniles and restitution. Current law gives judges discretion in ordering restitution when the juvenile would suffer hardship or is not able to pay. Again regarding juveniles, the work group found that current statutory limitations on damages which victims may collect from the parents or guardian of a juvenile should be raised. Based on these findings, the work group recommends the following:

- in all cases, whether or not a judge orders restitution, the court should address the issue of restitution and there should be some indication on the mittimus that the issue of restitution was addressed (see pages 27 and 28);
- an order of restitution should be a lifetime obligation that stands whether or not an offender has completed his or her sentence (see page 28);
- district attorneys should provide timely restitution information to probation officers for preparation of pre-sentence investigation reports and probation officers should consistently address restitution in pre-sentence investigation reports (see page 27);
- there should be some mechanism for judges to order restitution but defer a decision on the full amount of restitution until after sentencing in order to take into account a victim's ongoing medical expenses for instance, or in order to take the time needed to fully assess the full amount of restitution in complex cases and in cases where there are multiple victims perhaps in multiple jurisdictions (see pages 27 and 28);
- victims should be compensated when counts are either dropped or dismissed as part of a plea bargain (see page 27);
- orders of restitution should be made without regard for the ability of the offender to pay but judges should be able to take into consideration the rate of payment by the offender (see page 28);
- especially in cases involving large sums of money (white collar crimes), orders of restitution should include interest to cover the loss of the use of the money that was stolen (see page 28);
- current statute should be amended to allow victims who come forward after a sentence or Grand Jury indictment to be eligible for restitution (see page 28);
- the statutes should be amended to require judges to order restitution in all juvenile cases without regard for hardship or for the ability of the juvenile to pay (see page 29);
- current statutory limits on the amount of damages victims may collect from the parents or guardian of a juvenile should be raised to \$25,000 (see page 30);

- procedures for joint and several restitution orders should be established and consistently applied and procedures should be established for distributing any overpayments of restitution collected under a joint and several order (see page 30).

(III) Examine methods of collections throughout the criminal justice system to determine consistency of collection. The work group considered current methods of and responsibilities for collecting restitution. Regarding probationers and parolees, the work group found that, due to the demands of monitoring defendants for issues related to treatment and community safety, probation and parole officers have generally been able to give restitution collections only minimal attention. However, the work group learned that collections investigators who are located in each judicial district have primary responsibility for collecting restitution from probationers. Further, there are successful pilot programs in some judicial districts to use private collections agencies to collect past-due restitution from probationers. Regarding parolees, the work group found that while parolees are statutorily required to make restitution payments as a condition of parole, current statutes are inconsistent regarding the options available to the parole board for parolees who do not meet this condition.

The work group considered whether some of the remedies available to child support enforcement units in Colorado could be adopted to collect restitution. The work group also discussed creating an offender-funded restitution fund from which victims would be reimbursed for losses suffered in a crime. Based on all of these discussions, the work group recommends the following:

- the number of collections investigators in the Judicial Department should be increased and their role should be expanded to using available civil remedies (see pages 35 and 81), adapting child support enforcement remedies (see page 41) for collecting restitution, and contracting with private collections agencies to collect overdue restitution (see page 36);
- the statutes should be amended to clarify the options available to the parole board aside from revoking parole when a parolee fails to pay restitution (see page 40);
- all mittimuses accompanying an offender sentenced to the DOC should indicate the amount of any restitution ordered (see pages 27 and 38);
- any and all appropriate child support enforcement tools employed by units of child support enforcement should be adapted to collect restitution within existing system structures and where they can collaborate and communicate (see page 41); and
- the General Assembly should further study and consider the benefits of creating a fund, funded by a surcharge and by offenders' restitution payments, from which victims of crime would be paid (see page 43).

(IV) Examine methods of distribution of collected moneys to crime victims to determine consistency of dissemination. The work group focused its discussions regarding the consistency of dissemination of collected moneys around moneys collected from DOC inmates and the issue of the priority order of the distribution of collected moneys.

The work group discussed more efficient ways to collect and disseminate moneys collected from inmates and parolees. The work group also addressed the inconsistencies in current law regarding the priority order of distribution of collected restitution. Some statutes indicate that restitution should be distributed first, other statutes say child support enforcement should be distributed first.

Based on these discussions, the work group recommends the following:

- the priority order of distribution of collected restitution should be as follows:
 - 1) the Victim's Compensation Fund;
 - 2) the Victim's Assistance and Law Enforcement fund (VALE); and
 - 3) restitution.

The General Assembly should order the priority of distribution for other purposes (aside from court fines and fees) around these three funds (see page 49).

(V) Examine the statutory framework for converting criminal orders of restitution into civil judgments. The work group found there was considerable confusion over current statutory language which provides that an order of restitution is a final judgement in favor of the state or the victim and may be enforced by any party in whose favor the judgement was entered in the same manner as a judgement in a civil action. While the statute appears to automatically convert a criminal order of restitution into a civil judgement, the statutes do not list in one place the civil remedies available to victims and do not provide any procedures for victims to follow in taking advantage of civil remedies. Based on this finding, the work group recommends the following:

- the statutes should clarify and outline specific procedures for victims to pursue a civil judgement and to follow in accessing civil remedies to collect restitution (see page 55);
- collections investigators in the Judicial Department should be available, perhaps in the context of a restitution center, to victims who want to access civil remedies to collect restitution (see pages 55 and 69); and
- remedies currently available to units of child support enforcement for collecting child support should be adapted to current systems to collect restitution (see page 41).

(VI) Examine the use of garnishment as a tool to enhance collections. Current statutes provide that on past due orders of restitution, the court may direct that a certain portion of a defendant's earnings, not to exceed 50 percent, may be withheld to pay off unpaid restitution. Based upon this finding, the work group recommends that this tool continue to be used to collect restitution, in conjunction with civil remedies and remedies used by child enforcement units (see page 61).

(VII) Examine the assessment of restitution for offenders sentenced to the county jail. The Colorado Court of Appeals has held that if an offender is sentenced to jail with no work release, probation, or parole, the court may not order restitution. Based upon this finding, the work group recommends that the statutes clarify that courts must order restitution for offenders sentenced only to a jail term. The statutes should be consistent in clarifying that the court must order restitution for offenders under a deferred sentence or deferred prosecution (see page 65).

(VIII) Research promising practices in enhancing restitution assessment, collection, and distribution to crime victims. The work group considered two promising practices in collecting and distributing restitution: restitution centers and mediation.

The work group focused on the idea of restitution centers that will serve as a resource for victims who are attempting to collect restitution. While the work group did not want to unnecessarily duplicate services currently provided to victims, the work group felt it was important that there be "one-stop shopping" for victims who are attempting to collect restitution.

Mediation programs are in use in several judicial districts in Colorado. One component of those programs is collecting restitution from offenders. The programs are used with juvenile and adult offenders, are voluntary on the part of the victim and offender, and are staffed by volunteer mediators. While the programs' main focus is on a dialogue between the victim and offender in order that the offender fully realize the damage caused to the victim, a secondary focus is for the offender to make reparations to the victim. (The work group did not discuss mediation programs for offenders sentenced to the DOC but the DOC indicated it is studying its own "dialoguing" program for victims and offenders.)

Based on these findings, the work group recommends the following:

- further consideration and study be given to the idea of "one-stop shop" restitution centers as a resource for victims of crime. Current systems should be used to implement the centers and the Judicial Department's collections investigators may be the appropriate staff for such centers. Restitution centers should have access to all information regarding an offender's status and obligation to pay restitution. Restitution centers should provide victims assistance in collecting restitution (see page 69); and
- the use of mediation programs should be encouraged as a forum for victims to fully express the harm caused by offenders, for offenders to own up to the

damage caused to the victim, and to develop a plan of reparations to the victim (see page 70).

(IX) Make recommendations concerning statutory changes to facilitate greater offender accountability. While all of the issues the work group studied involve methods to facilitate greater offender accountability, the work group considered one other issue which would facilitate greater offender accountability. Work group members found that "white collar" crimes often involve greater sums of money and sometimes involve multiple victims. Because of the large sums of money involved, and because of the type of offenses involved, offenders can easily hide assets so that upon conviction, the offender has no income to attach and no assets to seize in order to pay off court-ordered restitution. Based on this finding, the work group recommends that the statute be amended to allow a defendant's assets to be frozen at the time a case is filed. By freezing the assets, the assets cannot be hidden or transferred to another person. If the defendant is found guilty, the assets then can be liquidated in order to pay the order of restitution when it is entered by the court (see page 75).

INTRODUCTION

This section contains an explanation of:

- House Bill 99-1254, the makeup of the work group, and the charge to the work group;
- restitution, the victim's compensation program, and the VALE program in Colorado;
- the flow of restitution in Colorado; and
- the data on the assessment and collection of restitution in Colorado.

INTRODUCTION

House Bill 99-1254

During the 1999 legislative session, Representative Bill Swenson introduced House Bill 99-1254 which proposed numerous changes concerning the collection of criminal restitution. After the bill was introduced, interested parties who were concerned with some of the bill's provisions requested a study of the issue of restitution. When the bill reached the first committee of reference, the House Judiciary Committee, the bill sponsor requested that the committee strike the bill's original provisions and instead he asked for a comprehensive study of restitution. House Bill 99-1254, as adopted by the General Assembly, directed the Legislative Council staff to conduct a study of restitution.

House Bill 99-1254 directed the Legislative Council staff to study the assessment, collection, and distribution of criminal restitution in Colorado. The Division of Criminal Justice (DCJ) in the Department of Public Safety was directed to assist Legislative Council staff with completing the study. House Bill 99-1254 also required that Legislative Council staff consult with the specific state agencies and private organizations in conducting the study. Legislative Council staff formed a work group comprised of one individual from each agency and organization designated in the bill.

A list of the 14 agencies and organizations along with the individual representing that agency or organization follows:

- the Judicial Department (Paul Litchewski, Financial Services Division);
- the Department of Corrections (Alison Morgan, Legislative Liaison);
- the Department of Law (Matt Holman, Assistant Attorney General);
- the Colorado District Attorney's Council (Ann Terry, Deputy Director);
- local crime victim compensation boards (Canon City Police Chief Marty Stefanic, Chair, Victim Compensation Board);
- Victim and Witnesses Assistance and Law Enforcement (VALE) Boards (Kim Slaughter, Director, Jefferson County Victim and Witness Assistance Unit and VALE Board);
- statewide victim advocacy organizations (Donna Purdy, Deputy Director, Colorado Organization for Victim Assistance (COVA));
- local community corrections boards (Jonathan Fry, Executive Director, Community Responsibility Center);

- community corrections providers (Dino Martinez, Colorado Community Corrections Coalition);
- the State Board of Parole (Larry Schwarz, Chair);
- County Sheriffs of Colorado, Inc. (Pueblo County Sheriff Dan Corsentino);
- Colorado Chiefs of Police (Louisville Police Chief Bruce Goodman);
- the Department of Public Safety (Mary McGhee, Senior Policy Analyst, Division of Criminal Justice); and
- victims of crime who have experience attempting to collect restitution (Karen DeMello, Weld County Court).

The charge to the work group in H.B. 99-1254 follows:

- (I) Examine existing restitution statutes to identify inconsistencies;
- (II) Examine methods of assessment to determine consistency of assessment;
- (III) Examine methods of collections throughout the criminal justice system to determine consistency of collection;
- (IV) Examine methods of distribution of collected moneys to crime victims to determine consistency of dissemination;
- (V) Examine the statutory framework for converting criminal orders of restitution into civil judgments;
- (VI) Examine the use of garnishment as a tool to enhance collections;
- (VII) Examine the assessment of restitution for offenders sentenced to the county jail;
- (VIII) Research promising practices in enhancing restitution assessment, collection, and distribution to crime victims; and
- (IX) Make recommendations concerning statutory changes to facilitate greater offender accountability.

House Bill 99-1254 directed that Legislative Council staff deliver to the Legislative Council a final report on or before September 1, 1999. The work group had its first meeting on July 8, 1999. The work group planned to meet five times by September 2 (eight weeks).

However, once the study was underway, it became apparent that five meetings would not be enough time to meet the legislative charge. The work group added an additional meeting date, and had its last meeting on September 9, 1999.

RESTITUTION AND OTHER VICTIM SERVICES

While the charge of H.B. 99-1254 was to focus on the issue of restitution, the discussion of restitution required a discussion of two programs which provide moneys and services to victims of crime: the Victim's Compensation Fund and the Victims and Witnesses Assistance and Law Enforcement Fund. In order to distinguish restitution from these two victim funds, a description of each follows.

Restitution — Upon sentencing an offender, the court orders the defendant to pay restitution to the victim. Restitution is typically based on the monetary loss suffered by the victim (such as the loss of possessions) and certain expenses incurred (such as medical expenses) as a result of the crime. Because restitution is not ordered until sentencing, and offenders generally do not pay the entire amount of restitution owed at sentencing, victims generally receive restitution in payments over a long period of time.

Victim Compensation — Victims of violent crime may apply for victim compensation in the judicial district in which they reside. Victims are eligible for up to \$20,000 for out-of-pocket expenses not covered by insurance or up to \$1,000 for emergency needs. Moneys to pay crime victim compensation are collected through a cost assessed to all felony, misdemeanor, and traffic offenders. Victim compensation awards are available only for reimbursement of medical and mental health expenses, lost wages and support to dependents, funeral expenses, and to repair or replace doors, locks, and windows on residential property. Victim compensation awards are not available for replacing stolen or damaged personal property. If approved, victim compensation moneys are awarded to victims within 30 to 45 days of application. When a victim receives an award for items or expenses for which an offender later pays restitution, the offender can be directed to pay that restitution to the victim compensation fund.

Victims and Witnesses Assistance and Law Enforcement Fund (VALE) — Crime victims may take advantage of services provided by agencies that receive moneys from the VALE fund. Moneys to pay for these services are collected through a surcharge assessed to all felony, misdemeanor, and traffic offenders. Among the services provided to crime victims via the VALE fund are early crisis intervention, telephone lines for victims and witnesses assistance, referral of victims to social service and victim compensation programs, assistance in filling out forms for compensation, educating victims and witnesses about the criminal justice system, assistance in the prompt return of victims' property, notification to victims of the progress of the investigation and other details about the case, intercession with victims' and witnesses' employers and creditors, assistance to elderly victims and disabled victims in arranging transportation to and from court, translator services, counseling for court appearances, protection from threats of harm and intimidation, and special advocate services. Crime victims in need of these services are referred from a variety

of sources including law enforcement, district attorneys, and victim advocates. Because there is no application process for these services, victims have immediate access to these services.

HOW RESTITUTION FLOWS

Following is a listing which explains the flow of how restitution is determined, assessed, collected, and distributed under current law.

Pre-sentencing

District Attorneys — After a case is filed with the district attorney, the Victim/Witness Assistance Unit sends restitution affidavits to all identified victims. The victims are responsible for providing the appropriate information and returning the affidavits to the district attorney's office. The district attorney's office analyzes the affidavits and produces a motion and order for restitution which is then filed in the criminal case file.

Judicial Branch — Prior to sentencing, a pre-sentence investigator in the Probation Department prepares a pre-sentence investigation report (PSIR) which includes information on the defendant's criminal history as well as on the current conviction, the impact on the victim, and any amount of restitution owed. The PSIR is forwarded to the judge for sentencing and a restitution order.

Post-sentencing

After the judge enters an order of restitution, the order is recorded on the offender's mittimus (final sentencing order) and the order is entered as a receivable on the statewide integrated court computer system, ICON. Offenders are ordered to pay restitution through the registry of the court (clerk of the court). Amounts paid and balances are maintained in ICON. The method of collecting restitution and forwarding it to the court differs depending upon the state agency responsible for supervising or monitoring the offender.

Judicial Branch (Probation) — As a condition of probation, offenders are required to make court-ordered restitution payments. Probation officers are responsible for making sure probationers maintain conditions of probation. However, each judicial district is staffed with collection investigators who conduct financial interviews with and evaluations of offenders, set up and monitor payment schedules, and enforce orders for payment.

Department of Corrections (Inmates) — When an inmate is sentenced to the DOC the mittimus that accompanies the offender indicates the amount of restitution owed. Upon admission to the DOC, an individual restitution account is created for the inmate and the inmate designates the amount of money that will be credited to that account. The DOC, on a quarterly basis, transfers moneys from the account to the court clerk for distribution. In

addition, 20 percent of all inmate earnings from federally-certified work programs are deducted from the gross wages of all participating inmates and placed in a fund. Up to 75 percent of those contributions may be applied to restitution obligations.

Division of Adult Parole Supervision (Parolees) — As a condition of parole, parolees are required to make court-ordered restitution payments. Parole officers are responsible for making sure parolees maintain conditions of parole. Parole officers are also responsible for collecting restitution payments from parolees and transferring those payments to the clerk of the court.

Community Corrections — Offenders in community corrections facilities are required to maintain full-time employment and turn in their paychecks to be budgeted for restitution. Clients sign a contract in which they agree to pay the full amount of restitution and which indicates the percentage of each paycheck that will go towards that end. The community corrections facility forwards the payments to the clerk of the court.

ANALYSIS OF DATA ON THE ASSESSMENT AND COLLECTION OF RESTITUTION

Developing research questions. The Judicial Department and Legislative Council staff met to discuss the availability of data from ICON supporting, confirming, or disputing claims made regarding the assessment and collection of restitution. At the first meeting, Judicial and Legislative Council staff discussed research questions and what questions could be addressed in the time frame allowed by the study period. The result of this first meeting was a set of research variables (Table 1, page 17) that the Judicial Department would collect.

Extracting data to address the research questions. The Judicial Department took these research questions to internal programmers to extract data from the ICON system. After a discussion with the programmers regarding how best to gather these data, it was determined that these research objectives could be met by running three separate programs that would produce three data sets.

The first program produced a data set of *all offenders in FY 1996-97* with case type (felony, misdemeanor, criminal traffic, non-criminal traffic, and juvenile), court location, restitution order amount, disposition, and sentence. It was intended that this data set would yield information as to how often restitution was ordered, how much was ordered, the differences in restitution orders by case type, felony class, and any variance in how restitution was ordered among judicial districts.

The second program produced a data set of *all adult and juvenile offenders (non-DUI offenders) terminated from probation in FY 1998-99* with case type, court location, disposition and disposition date, sentence and sentence date, and restitution order amount and date. It was intended that this data set would yield information as to the average

percentage of the restitution order balance unpaid at different lengths of time (e.g. how much of the restitution balance was paid through the first year? the second year? or the third year of the sentence?). The average percentage unpaid could be disaggregated by case type, court location, disposition, sentence, and the funds (VALE, restitution, fines, etc.) to which payments were credited.

The third program produced a data set of *all cases where the final restitution balance was zero in FY 1998-99* with case type, court location, disposition and disposition date, sentence and sentence date, restitution order amount and date, and the funds (VALE, restitution, fines, etc.) to which payments were credited. It was intended that this data set would yield information as to the average length of time it takes for offenders to complete restitution payments. This average length of time could be disaggregated by case type, court location, disposition, sentence, and the fund (VALE, restitution, fines, etc.) to which payments were credited.

Analyzing the data. The Judicial Department contracted with an independent consultant to analyze these data and to address the research questions agreed upon in the first meeting with Legislative Council. Because of time constraints (partly due to the significant resources necessary to accurately interpret variables), the research sample was limited to seven judicial districts: the 1st District (Gilpin and Jefferson), the 2nd District (Denver district and juvenile courts only), the 4th District (El Paso and Teller), the 5th District (Clear Creek, Eagle, Lake, and Summit), the 17th District (Adams), the 18th District (Arapahoe, Douglas, Elbert, and Lincoln), and the 20th District (Boulder). Results of the data for the above districts cannot be considered representative of the state. Anecdotal evidence suggests that these districts have demonstrated innovative practices, such as the use of private collection agencies and the use of video cameras to assess a defendant's assets. In other words, these districts may represent the "cream of the crop" in restitution assessment and collection and it can be expected that these results represent better-than-expected figures. Even if this anecdotal evidence is discounted, these results can, at best, be considered representative of only the urban districts of the state.

Also due to time constraints, some research questions could not be addressed for this report. For the purpose of providing an overview of the available data on restitution, the independent consultant provided information as to:

- the number and percentage of all sentenced cases in calendar year 1996 that had restitution orders associated with them;
- the total dollar amount assessed in these restitution orders;
- the average dollar amount assessed per restitution order;
- the total dollar amount of the restitution order still outstanding at the time of the data extraction (August 1999);
- the average outstanding balance due per case;
- the number of the cases in which restitution has been paid in full at the time of the data extraction (August 1999), thereby encompassing a 2½ year (12/96 to 8/99) to 3½ year (1/96 to 8/99) repayment period window;

- the percentage of cases in which restitution has been paid in full; and
- the percentage of the restitution total dollar amount assessed that has been paid in full.

Results. Table 2 (page 18) illustrates the above items for the sample of the six judicial districts. These data suggest that a significant portion of restitution orders remained unpaid after three years. Among all case types, only 22.2 percent of the *dollar amount* of restitution assessments have been paid and 49.7 percent of the *individual cases* have been paid in full as of August 1999. For those adult criminal cases sentenced in 1996 (in which the average restitution amount was \$4,384), 36.1 percent of restitution orders were paid in full as of August 1999. As a comparison, of those juvenile cases sentenced in 1996 (in which the average restitution amount was \$843), 51.5 percent of restitution orders were paid in full as of August 1999. The average restitution amount for criminal traffic cases was \$817 in 1996 and in three years, 70.6 percent of those orders were paid in full. For adult misdemeanor cases, the average restitution amount ordered was \$341 in 1996 and as of August 1999, 72.2 percent of those orders were paid in full.

Juvenile, traffic, and misdemeanor cases had significantly higher rates of paid in full restitution orders than adult criminal cases. Juvenile orders were paid off at a much higher rate than adult criminal orders. This suggests that there may be successful procedures being implemented in juvenile court and on juvenile probation that influence juvenile offenders completing restitution payments. Further, the higher completion rate may be due to parents who pay off a juvenile's restitution order though there is no data to determine the extent to which this happens. Additionally, statutory provisions allow the court to hold parents liable for damages caused by juveniles (see page 30). One should note that juveniles have smaller restitution order amounts relative to adults, and this may impact the higher relative completion rate. One should also note that there may be more instances of joint and several orders in juvenile cases (in which co-defendants are each assessed the entire restitution order). Still, these data results suggest that adult criminal restitution orders are paid off with less diligence than juvenile restitution orders and orders for less serious crimes such as misdemeanors and traffic offenses.

Caveats in Interpreting the Data

These restitution data include joint and several restitution orders, suggesting that the total, average, and outstanding restitution order amounts for defendants may be inflated (reflecting potential double-counting of restitution orders). This also suggests that the percentage of total restitution paid for juveniles (37.9 percent) may be deflated because the total and outstanding amounts are overestimated. If the total and outstanding restitution amounts were to accurately represent what juveniles owe in restitution, the percentage of restitution paid would likely increase. (For example, if there was \$1,000,000 in total restitution assessed, \$600,000 still outstanding, and \$400,000 paid, this would suggest a payment rate of 40 percent. However, if \$200,000 of the total assessed represented double-counted joint and several cases, there would truly be \$800,000 in total restitution assessed,

\$400,000 in uncollected restitution, and \$400,000 paid, suggesting a payment rate of 50 percent.

The Judicial Department added the following caveats in the interpretation of these data:

- data may include some Judicial Department estimates;
- a relatively small percentage of cases makes up a disproportionately large percentage of the remaining total balance (60 percent of the dollars still owed are owed on only 3 percent of the cases; therefore, the relatively few high balance cases skew the aggregated collection rate);
- these data reflect an analysis of payment over a specific time frame; payments continue to come in on these cases and many offenders will continue to pay throughout their term of probation, which can vary between 1 to 20 years; and
- many of the cases were sentences to DOC, where significant payment is not expected until the offender is released (or is in a placement that allows wage gains through Correctional Industries).

Restitution assessed vs. restitution collected. For a discussion of and data on restitution collection ratios (assessments vs. collections), see page 51.

TABLE 1: RESEARCH VARIABLES FOR THE STUDY OF THE COLLECTION OF CRIMINAL RESTITUTION

| Variable | Use/Rationale | Data Available/Reliable |
|---|---|---|
| Restitution amount ordered and amount paid at yearly intervals | To determine the percent of the amount paid through the first year, second year, third year, and so on | Must review raw data to identify co-defendants |
| Date of restitution order and date of last payment | To determine the average amount of time to pay all of restitution (last payment date minus date of court order) | Due to joint and several orders, cannot accurately determine amount of unpaid restitution |
| Fund distribution (victim's compensation, VALE, restitution) | To identify and compare the assessment and distribution of collected moneys: victim compensation, VALE, restitution | |
| Crime type (criminal adult, juvenile, civil, if any) | To compare the assessment of restitution between adult and juvenile criminal cases | |
| Crime class and case type (class 1 through class 6 felony, class 1 through class 3 misdemeanor, traffic, petty offense) | To compare the assessment of restitution between felony, misdemeanor, petty offense, and traffic cases and by crime class | |
| Statute charged/convicted | To compare the assessment of restitution by crime | |
| By final disposition | To compare those sentenced to placements to those with deferred judgements | Deferred judgement could get restitution |
| Sentence date | To determine the historical trend of restitution in sentencing | |
| By original placement | To compare the assessment of restitution by offender placement: probation, DOC, community corrections, county jail, DYC, or YOS | Current placement not available |
| Judicial District and County | To compare the assessment of restitution around the state | Unreliable data at court level |
| Restitution amount paid at quarterly intervals | To determine the regularity and consistency of payment over the restitution period | Quarterly payment draws would be time consuming |

TABLE 2: A SAMPLE OF SEVEN COLORADO DISTRICTS -- CASES SENTENCED IN CALENDAR YEAR 1996

| | Criminal | Juvenile | Criminal Traffic | Misdemeanor | Traffic Infractions | Total |
|---|-----------------|-----------------|-----------------------------|--------------------|--------------------------------|---------------|
| Total cases sentenced | 20,004 | 7,366 | 72,036 | 22,843 | 33,606 | 155,855 |
| Cases with restitution | 5,140 | 1,980 | 2,165 | 956 | 13 | 10,254 |
| Percent of cases with restitution | 25.7% | 26.9% | 3.0% | 4.2% | 0.0% | 6.6% |
| Total restitution assessed (\$) | \$ 22,533,734 | \$ 1,669,472 | \$ 1,769,258 | \$ 326,132 | \$ 17,164 | \$ 26,315,760 |
| Average restitution assessed (\$) | \$ 4,384 | \$ 843 | \$ 817 | \$ 341 | \$ 1,320 | \$ 2,566 |
| Total restitution balance due (\$ as of August 1999) | \$ 18,567,172 | \$ 1,037,179 | \$ 757,756 | \$ 112,171 | \$ 12,525 | \$ 20,486,803 |
| Average restitution balance due (\$ as of August 1999) | \$ 3,612 | \$ 524 | \$ 350 | \$ 117 | \$ 963 | \$ 1,998 |
| Total restitution paid (\$ as of August 1999) | \$ 3,966,562 | \$ 632,293 | \$ 1,011,502 | \$ 213,961 | \$ 4,639 | \$ 5,828,957 |
| Cases with restitution order paid (zero balance as of 8/99) | 1,854 | 1,020 | 1,529 | 690 | 8 | 5,101 |
| Percent of cases with restitution order paid (zero balance) | 36.1% | 51.5% | 70.6% | 72.2% | 61.5% | 49.7% |
| Percent of total restitution balance paid | 17.6% | 37.9% | 57.2% | 65.6% | 27.0% | 22.2% |

Source: Judicial Department

Note: Data sampled from seven judicial districts (the 1st, 2nd, 4th, 5th, 17th, 18th, and 20th) including the following counties: Gilpin, Jefferson, Denver (District and Juvenile Courts only), El Paso, Clear Creek, Eagle, Lake, Summit, Teller, Adams, Arapahoe, Douglas, Elbert, Lincoln, and Boulder.

STATUTORY INCONSISTENCIES

This section contains an explanation of and recommendations on:

- **statutory inconsistencies in Colorado Revised Statutes with regards to restitution.**

STATUTORY INCONSISTENCIES

Discussion

The work group spent a considerable amount of time discussing current statutes and what changes should be made to facilitate increased assessment, collection, and distribution of restitution. To that end, the work group focused its attention on four main areas to address statutory inconsistencies: 1) the need for the statutes regarding restitution to be centralized in one article; 2) the need for a legislative declaration which articulates the General Assembly's intent regarding restitution; 3) a universal definition of "victim;" and 4) a universal definition of "restitution" that specifies what constitutes restitution.

Centralizing the restitution statutes. The work group found the current statutory scheme to be piecemeal and fragmented. Various statutes impose different requirements on offenders to pay restitution. Other statutes appear to contain no mandate for courts to order offenders to pay restitution. The current statutory scheme in which various provisions regarding restitution are contained in various titles and articles is not conducive to assessing, collecting, or distributing restitution. The work group believes that locating all of the restitution provisions under one article in the statutes will alleviate definitional and procedural discrepancies under current statutes and make the statutes more "user-friendly" for courts, agencies, victim advocates, and victims. The work group set out to create an integrated restitution statute that would create a statutory scheme that provides for a state-sanctioned "system" for assessing, collecting, and distributing restitution. Under the work group's plan, current statutory provisions would be amended as necessary and cross-referenced to the new article.

The need for a legislative declaration. The work group recognized the need for a legislative declaration to state the General Assembly's intent that courts order defendants to pay restitution to victims. The work group recommends the legislative declaration state the purpose of paying restitution and provide clear statements of intent to courts for ordering restitution and to state departments and agencies for collecting and distributing restitution.

The definition of "victim." Under current law, for the purposes of restitution, there are three definitions of "victim" contained in two titles. These definitions are used for different purposes. In Title 16, there are two definitions of victim, one which speaks to the definition of victim for the purposes of collecting restitution and another which speaks to restitution as a condition of probation. The definition of "victim" in Title 17 speaks to restitution as a condition of parole. All three definitions speak to restitution for a "victim" or a "victim's immediate family." "Victim's immediate family" is consistently defined as the victim's spouse, parent, sibling, or child living with the victim.

All three of these definitions of "victim" include a victim compensation board that has paid a victim compensation claim and any entity or person who has suffered losses

because of a contractual relationship with a victim including, but not limited to, an insurer. The definition of "victim" is substantively the same for the purposes of restitution as a condition of probation and restitution as a condition of parole. However, while both of these definitions of "victim" include any party immediately and directly aggrieved by a defendant, the definition of "victim" for the purposes of collecting restitution in Title 16 does not include this clause.

Although these definitions of "victim" contain many of the same elements and are not necessarily inconsistent with each other, for the purposes of a centralized restitution statute, the work group recommends a more comprehensive definition of victim which incorporates the elements in the existing definitions as well as additional elements.

Of particular concern to the work group was whether or not to include traffic infractions in the list of types of crimes for which victims may receive restitution. Traffic infractions are not criminal offenses and the work group worried about ordering restitution for non-criminal offenses. On the other hand, some district attorneys do recommend, in conjunction with other criminal charges, restitution in traffic offenses. Also, the work group recognized that while the purpose of insurance is to compensate victims in traffic offenses, many traffic offenders do not have insurance. The work group wrestled with this question of including traffic infractions in the definition of offender and could not come to an agreement.

The definition of "restitution." Under current law, the term "restitution" is not defined though various statutes dictate what constitutes restitution. In Title 16, regarding determination of the amount of restitution a defendant will be liable for, and in Title 17 regarding restitution as a condition of parole, restitution constitutes the "full pecuniary loss" caused by the defendant. However, in Title 16 regarding restitution as a condition of probation, two different terms are used to designate what constitutes restitution: the "actual damages that were sustained" and the "actual pecuniary damages sustained by the victim." None of these terms is defined.

The work group concluded that these statutory provisions regarding what constitutes restitution should be standardized and recommends a comprehensive definition of "restitution" for the purposes of a centralized restitution statute. The work group wanted courts to have clear statutory direction on what kinds of damages are included in restitution. The work group went beyond the current definitions of what constitutes restitution to include expenses such as a victim's out-of-pocket expenses, the loss of money, adjustment expenses by insurance companies, and money advanced by law enforcement.

Priority order for distribution of payments. There are various statutory provisions which list the order for the distribution of payments received by the court clerk from offenders. There is a different list for each category of offenders: probationers, offenders on work release, offenders participating in DOC joint venture agreements, county prisoners, and offenders in community corrections.

Because this particular category of statutory inconsistency involves how payments are distributed and because funds other than restitution are involved, this issue is discussed in greater detail in the distribution section of this report on page 49.

Recommendations

The work group recommends the following legislative declaration.

THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

- CRIME VICTIMS ENDURE UNDUE SUFFERING AND HARDSHIP BY VIRTUE OF PHYSICAL INJURY, EMOTIONAL AND PSYCHOLOGICAL INJURY, OR LOSS OF PROPERTY;
- PERSONS FOUND GUILTY OF CAUSING SUCH SUFFERING AND HARDSHIP SHOULD BE UNDER A MORAL AND LEGAL OBLIGATION TO MAKE FULL RESTITUTION TO THOSE HARMED BY THEIR MISCONDUCT;
- THE PAYMENT OF RESTITUTION BY CRIMINAL OFFENDERS TO THEIR VICTIMS IS A MECHANISM FOR THE REHABILITATION OF OFFENDERS;
- RESTITUTION IS RECOGNIZED AS A DETERRENT TO FUTURE CRIMINALITY;
- AN EFFECTIVE CRIMINAL JUSTICE SYSTEM REQUIRES TIMELY RESTITUTION TO VICTIMS OF CRIME AND TO MEMBERS OF THE IMMEDIATE FAMILIES OF SUCH VICTIMS IN ORDER TO LESSEN THE FINANCIAL BURDENS INFLICTED UPON THEM, TO COMPENSATE THEM FOR THEIR SUFFERING AND HARDSHIP, AND TO PRESERVE THE INDIVIDUAL DIGNITY OF VICTIMS;
- FORMER PROCEDURES FOR RESTITUTION ASSESSMENT, COLLECTION, AND DISTRIBUTION HAVE PROVEN TO BE INADEQUATE AND INCONSISTENT FROM CASE TO CASE;
- THE PURPOSE OF THIS ARTICLE IS TO FACILITATE THE ESTABLISHMENT OF PROGRAMS AND PROCEDURES TO PROVIDE FOR AND COLLECT FULL RESTITUTION TO VICTIMS OF CRIME IN THE MOST EXPEDITIOUS MANNER; AND
- THE EFFECTIVE AND TIMELY ASSESSMENT, COLLECTION, AND DISTRIBUTION OF RESTITUTION REQUIRES THE COOPERATION AND COLLABORATION OF ALL CRIMINAL JUSTICE AGENCIES AND DEPARTMENTS.

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT RESTITUTION BE ORDERED, COLLECTED AND DISBURSED TO THE VICTIMS OF CRIME AND THEIR IMMEDIATE FAMILIES, SUCH RESTITUTION AIDING THE OFFENDER IN REINTEGRATION AS A PRODUCTIVE MEMBER OF SOCIETY. THIS ARTICLE SHALL BE LIBERALLY CONSTRUED TO ACCOMPLISH SUCH PURPOSES.

The work group recommends the following definition of "victim":

"VICTIM" MEANS ANY PERSON AGAINST WHOM ANY FELONY, MISDEMEANOR, PETTY OFFENSE, OR TRAFFIC MISDEMEANOR HAS BEEN PERPETRATED OR ATTEMPTED, INCLUDING ANY PERSON WHO HAS SUFFERED LOSSES BECAUSE OF A CONTRACTUAL RELATIONSHIP WITH SUCH PARTY, INCLUDING, BUT NOT LIMITED TO, AN INSURER, OR BECAUSE OF LIABILITY UNDER SECTION 14-6-110, C.R.S., WHO HAS BEEN IMMEDIATELY AND DIRECTLY AGGRIEVED BY AN OFFENDER'S CONDUCT AND A VICTIM COMPENSATION BOARD THAT HAS PAID A VICTIM COMPENSATION CLAIM, UNLESS THE PERSON IS ACCOUNTABLE FOR THE CRIME OR A CRIME ARISING FROM THE SAME CONDUCT, CRIMINAL EPISODE, OR PLAN AS DEFINED UNDER THE LAW OF THIS STATE OR OF THE UNITED STATES, OR, IF ANY PERSON IS DECEASED OR INCAPACITATED, THE PERSON'S SPOUSE, PARENT, NATURAL OR ADOPTED CHILD, CHILD LIVING WITH THE VICTIM, SIBLING, GRANDPARENT, SIGNIFICANT OTHER, AS DEFINED IN SECTION 24-4.1-302 (4), C.R.S., OR OTHER LAWFUL REPRESENTATIVE.

The work group recommends the following definition of "restitution":

"RESTITUTION" MEANS THE ACTUAL PECUNIARY LOSSES BY A VICTIM, INCLUDING ALL OUT OF POCKET EXPENSES, INTEREST, LOST OF USE OF MONEY, FUTURE EXPENSES, REWARDS PAID BY VICTIMS, MONEY ADVANCED BY LAW ENFORCEMENT AGENCIES, ADJUSTMENT EXPENSES, AND OTHER LOSSES OR INJURIES PROXIMATELY CAUSED BY AN OFFENDER'S CONDUCT AND WHICH CAN BE REASONABLY CALCULATED AND RECOMPENSED IN MONEY.

ASSESSMENT

This section contains an explanation of and recommendations on:

- assessing restitution for adults in Colorado; and
- assessing restitution for juveniles in Colorado.

ASSESSMENT

Discussion

The work group identified several problems that hinder courts in getting the appropriate information regarding victims and which, in turn, hinder victims in getting an order for restitution.

Victim impact statements. Judges do not always have the necessary information needed to adequately address the issue of restitution. When the district attorney files a case, the victim/witness unit in the DA's office sends a packet of forms including a victim impact statement to the victim. The victim is to fill out the forms to explain how the crime affected the victim financially, physically, and emotionally. The DA includes the victim impact statement as part of the crime file which eventually goes to the court at sentencing. In some but not all cases, the victim impact statement is also forwarded to the probation officer who is assigned the task of writing the pre-sentence investigation report. The pre-sentence investigation report contains a section on victim impact and restitution.

In some cases, the victim does not return the victim impact statement in a timely manner or does not return the statement at all and the DA, the court, and the probation department do not have adequate information on which to determine an order of restitution. In other cases, depending upon the jurisdiction (all jurisdictions employ differing processes to accomplish this task), the probation officer may never get a copy of the victim impact statement and so the information on victim impact in the pre-sentence investigation report is lacking. When the information is lacking, the court may not be able to adequately address the issue of restitution.

Deferred restitution orders. Courts generally do not take into account a victim's ongoing expenses, such as medical bills, as part of the order of restitution. As a way around this problem, some courts, at sentencing, defer the order of restitution to a restitution hearing at a later date (not all courts employ this practice). Also, in some cases, court personnel have accidentally neglected to put the order of restitution on the mittimus and so probation officers and DOC personnel do not know to collect restitution.

Pled and dismissed charges. In many cases, district attorneys allow defendants to plead guilty to charges that are lesser than the original charges. In other cases, more serious charges are dropped for a guaranteed conviction on lesser charges. In some cases, victims are denied restitution because the offender is not convicted of the crime committed. The work group noted that the victim has still suffered a loss whether or not the defendant is convicted of the originally charged crime.

Cross-jurisdictional crimes. Some victims fall through the cracks because there are numerous victims across jurisdictional lines. If one jurisdiction (Denver, for example) decides not to prosecute the case because the defendant is being tried for the same series of

offenses in another jurisdiction (Boulder, for example), the Denver victims will not be included in the court's order of restitution. There are other cases involving large sums of money and numerous victims. While the work group recognized that, in these cases, the chances are slim that all victims will be fully compensated, the work group was concerned about one victim receiving restitution at the expense of other victims who receive no restitution versus all victims receiving very small payments. The work group also recognized that victims in these cases are deprived of the use of these large sums of money for long periods of time.

Additional victims. There are cases involving victims who do not surface until after a defendant has been sentenced. Likewise, additional victims sometimes surface after a Grand Jury indictment has been delivered. Because constitutional provisions prohibit an additional sentence for a crime after original sentencing, victims in these cases are ineligible for a restitution award. While the work group could not make recommendations on how to get restitution orders for these victims, the work group recognized that these victims suffer losses regardless of the fact that they surfaced after sentencing.

Restitution as a lifetime obligation. The work group recognized that the statutes are not clear regarding whether offenders are still responsible for restitution payments after completing their sentences. While current statutes (Section 16-11-101.5, C.R.S.) imply that restitution orders remain in force until the obligation is met, the work group agreed the statutes need a clear statement to that effect. Likewise, the work group agreed that since an order of restitution should be enforceable even after an offender completes his or her sentence, the court should have no need to take into consideration an offender's ability to pay. The court should order the full amount of restitution so that if the offender should one day come into money, it can be used to pay restitution. Even though the court should not take ability to pay into consideration, the court should consider the rate at which the offender may be able to make restitution payments.

Recommendations

The work group recommends the following.

- The court should address the issue of restitution in every case. Even in cases in which restitution is not an issue, the court should say there is no restitution order to acknowledge that the issue was addressed.
- Every mittimus issued by the court should contain the restitution information. Even in cases in which no restitution is ordered, the mittimus should indicate the fact that the court ordered no restitution.
- All pre-sentence investigation reports should adequately address the issue of restitution so the court can adequately address the issue. Probation officers should receive training in addressing restitution and in how to get the necessary information in order to fully address the issue in the report.

- The statutes should clarify that orders of restitution are lifelong obligations that do not end once the offender has completed his or her sentence. Further, courts should order restitution without regard to the ability of the offender to pay. However, courts should take into consideration the rate at which the offender can pay off an order of restitution.
- In cases where restitution cannot fully be addressed at sentencing, courts should defer the restitution portion of the sentence until a later date. Courts should also defer final restitution orders in cases involving ongoing issues such as medical costs.
- In "white collar crime" cases involving large sums of money, courts should be allowed to order, as part of the restitution order, interest to cover the loss of the use of the money that was stolen.
- Prosecutors in prosecuting jurisdictions should seek out and add victims from non-prosecuting jurisdictions in cases involving more than one jurisdiction.
- Victims should be compensated for their losses in cases in which charges are dismissed or dropped as the result of a plea bargain to lesser offenses (the work group acknowledged this would be very difficult to accomplish but wanted to acknowledge that victims suffer the loss regardless of the mechanics or outcome of a case).
- Though the work group could not come up with a workable solution, there should be some mechanism to provide compensation to victims who are discovered after restitution has been ordered and after a Grand Jury indictment has been handed down.

ASSESSING RESTITUTION FOR JUVENILES

Discussion

The work group addressed juvenile cases that are appropriate for restitution orders, parental liability for juvenile crime, restitution orders among several co-defendants (joint and several liability), and other promising practices for restorative justice in the juvenile justice system.

Restitution orders based on a juvenile's ability to pay or economic hardship. Current law mandates that if the court finds that a juvenile who receives a deferred judgement or who is adjudicated a juvenile delinquent has caused personal injury to a victim or damaged a victim's property, the court shall order restitution for actual pecuniary damages done to persons or property. However, this same section limits restitution orders by exempting juveniles for whom restitution would cause serious hardship or injustice.

The work group considered how this statutory exemption for restitution in the case of hardship or injustice to the juvenile serves victims and juveniles. If a court decides the juvenile would suffer hardship or injustice by being required to pay restitution, the victim still suffers. Further, there are no statutory guidelines to define "hardship" or "injustice." In addition, the statutory provisions allowing parents to be held financially liable for crimes committed by juveniles did not seem to fit well with this exemption. The work group believes that, especially for juvenile offenders, allowing an exemption from paying restitution delivers the wrong message. The requirement to pay restitution, regardless of circumstances, can be an important component in preventing a juvenile from committing future crimes.

Restitution orders when a juvenile becomes an adult. Current statute provides that the juvenile court may retain jurisdiction over an offender until all orders have been complied with by the offender, even after the offender turns 18 years old.

The work group discussed whether the statutes are clear about a juvenile's responsibility to pay restitution even after the juvenile turns 18. While current statute makes it clear that the court retains jurisdiction over the juvenile until the juvenile complies with all of the court's orders, this statute does not explicitly state that juveniles are required to continue to pay restitution even after they turn 18.

Parental liability for damages caused by juveniles. Current law caps parental liability for damages caused by juveniles at \$3,500 when the juvenile knowingly causes bodily injury or damages property belonging to the victim. This statutory cap is raised to \$5,000 when the parent is a party to the delinquency proceedings.

The work group considered the current statutory limits on parental liability for acts committed by juveniles. The work group agreed that in most cases, especially in the context of restitution, parents should be held liable for acts committed by juveniles. The work group even considered whether the statutes should require parents to submit financial affidavits. The work group also considered eliminating the caps on parental liability but decided that current caps should be raised.

Joint and several restitution and juveniles. Juvenile cases, more than adult cases, involve crimes committed by groups of co-defendants. In these cases, courts split the restitution order among the group of offenders. The court may order each defendant to be responsible for his or her own portion of the restitution order or the court may order joint and several restitution. Under a joint and several restitution order, each co-defendant is assessed the entire amount of restitution owed. Joint and several restitution orders are not spelled out in statute but precedent for joint and several is established in case law.

There is no statutory clarification as to when co-defendants are each assessed the total amount of restitution owed or when that total amount is split proportionately between co-defendants. The work group discussed the need for clarification on how joint and several

restitution orders should be accounted for and how courts determine when to order joint and several restitution.

The Judicial Department maintains the accounting structure to track payments toward restitution orders. According to the Judicial Department's Financial Services Division, in the past there has been no way to indicate whether a restitution order is a joint and several order. Therefore, under a joint and several restitution order, the restitution accounting database may have three orders of restitution for \$10,000 each, suggesting a total of \$30,000 owed, when these entries should actually reflect three joint and several orders of restitution that add up to \$10,000. The Judicial Department reported that upgrades to the ICON computer system have been implemented to correctly reflect joint and several restitution orders.

In the context of juvenile offenders, the work group considered the obligation of other co-defendants to meet their obligations to pay restitution in cases where one co-defendant pays off the entire obligation. When the victim receives the entire amount owed and it was paid by only one co-defendant, the court considers the obligation paid and, in effect, other co-defendants are released from their obligation.

While the work group's overriding concern was to make the victim whole, the work group discussed the issue of equity of restitution payments among co-defendants. In these cases, the work group noted, the co-defendant who pays the entire amount can pursue a civil action to collect from the non-paying co-defendants. The work group was somewhat concerned about the message sent to co-defendants who do not pay any of their restitution obligation in these situations. The work group was most concerned with what to do with any extra payments that do happen to come in from co-defendants after the victim has received the entire payment. For these cases, the work group recommended these moneys be deposited in either the victim's compensation or VALE funds and recommended a procedure to determine how this will happen.

Promising practices for juvenile offender restitution. One notable program the work group discussed for juveniles and restitution involved mediation-based programs in which juvenile offenders face their victims and, with the assistance of a neutral third party, cooperatively develop a plan for restoring the victim. This restoration may include monetary payments or some other form of reparation. Several judicial districts in Colorado are currently experimenting with some form of mediation (see page 70 for a further detailed discussion and recommendation).

Recommendations

The work group recommends the following.

- Restitution should be required in ALL juvenile cases involving crimes in which there were actual pecuniary damages assessed by the court. The statutes should be amended to delete the requirement that in ordering restitution, courts should consider the juvenile's ability to pay or hardship. Similar to the recommendation regarding adult offenders, courts should only consider the rate at which the juvenile will pay off the restitution order.
- The statutes should explicitly state that a restitution order does not end when a juvenile becomes an adult. The statutes should state that a court will retain jurisdiction over a restitution order after a juvenile turns 18.
- Current statutory parental liability caps should be raised to \$25,000, regardless of whether the parents or guardians are party to the delinquency proceedings.
- Courts should establish a protocol for determining joint and several restitution orders. Joint and several orders should be identified on the mittimus of each defendant with reference to the other co-defendants. Should one of multiple offenders pay the entire amount owed a victim, any further payments made by co-defendants with outstanding obligations should be credited to the victim's compensation or VALE funds. A group comprised of the chair of the local victim's compensation board, the chair of the local VALE board, and the chief district court judge should determine annually how to distribute the funds.
- Other judicial districts should be encouraged to implement restorative justice programs for juvenile offenders (see page 70 for further detailed discussion and recommendations on mediation programs).

COLLECTIONS

This section contains an explanation of and recommendations on:

- expanding the collection investigator program in Colorado;
- the DOC's role in collecting restitution from inmates and parolees;
- adapting child support enforcement remedies to collect restitution; and
- further study of creating a restitution fund in Colorado.

EXPANSION OF THE COLLECTIONS INVESTIGATOR PROGRAM

Discussion

The collections investigator model currently in use in the Judicial Department has proven successful in increasing the amount of restitution collected from offenders. Expansion of the tools available to collections investigators could further enhance the effectiveness of the program. Extension of the program to the adult parole population could increase the amount of restitution collected from parolees while relieving parole officers of duties that detract from caseload management. The work group discussed the need for statutory clarification of the term "collections investigator," the need to statutorily delineate the authority of collections investigators, and the need to statutorily expand the program to the Division of Parole Supervision in the Department of Corrections. The goal of the suggested changes is in keeping with the general recommendation that efforts to collect restitution should be increased.

Background. The Judicial Department's collections investigator program began in 1989. Although the program initially focused on the county courts due to the high volume of offenders sentenced at that level who owed fines and court costs, the program's success prompted the Judicial Department to pilot the program in four district courts. According to a 1993 performance audit, the pilots were successful in 1) increasing collections; 2) reducing administrative caseloads for regular probation officers; and 3) evaluating the financial condition and monitoring payment plans for new cases.

The program has grown to include investigators in all 22 judicial districts. Collections investigators coordinate collection activities and ensure prompt payment of fines, costs, and restitution assessed against defendants. According to the Judicial Department, judges routinely direct defendants requesting delays of payment on their fines and costs to immediately report to their collections investigator upon sentencing.

Increased collections. The Judicial Department reports that the collaborative efforts of judges, probation officers, court staff, and collections investigators during the last several years have resulted in consistent gains in collections. Existing tools available to collections investigators include:

- monitoring payments and initiating action when orders of payment are not followed;
- attempting to collect full payment from the offender prior to the offender's departure from the courthouse at time of sentencing;
- establishing and limiting the length of payment schedules by conducting one-on-one interviews and by analyzing offenders' ability to pay;

- verifying wage data by accessing the Colorado Department of Labor's employment data base;
- developing reliable systems of payment through garnishment, attachment of bank accounts, automatic payroll deductions, and attachment of state income tax refunds;
- returning an offender to court for failing to comply with the court order; and
- informing offenders of work programs and providing job search information.

In addition to the tools noted above, the Judicial Department recently announced a new initiative — the Collections Enhancement Program — designed to further increase collections.

Collections Enhancement Program. With approximately 100,000 new payment schedules established each year, the application of consistent enforcement measures is a major challenge, both in terms of time and staff resources. Earlier this year the Judicial Department reported that a new pilot program involving nine judicial districts had been established. The new initiative, referred to as the Collections Enhancement Program, will take advantage of private sector collection agencies. Six companies, ranging in size from five to more than 5,000 employees, have been selected to work with the nine pilot districts during the next three years to develop and implement an additional process for collecting court-ordered assessments. The responsibility for payment schedules and overall financial enforcement will continue to reside with collection investigators. Private sector capabilities that should enhance collections include:

- use of national informational data banks to locate and track offenders who are avoiding their financial obligations;
- intensive financial investigations;
- advanced, customized letter and notice generating systems;
- automated 24-hour call-in systems;
- maximum use of credit bureaus; and
- reports and programs tailored to the courts' and probation departments' needs.

The Judicial Department reports that most of the cost for the increased financial enforcement will be borne by the offenders.

Expansion of the use of collections investigators to parolees. The work group discussed allowing the DOC to enter into an interagency agreement with the Judicial Department to use Judicial's collections investigators to collect restitution from parolees as well as to contract with private collection agencies to increase collections of restitution from parolees. Parole officers in the Division of Adult Parole Supervision are now responsible for collecting court-ordered restitution from parolees. Because the main responsibility of

parole officers is to supervise parolees, and because current parole officer caseloads dictate that supervising the collection of restitution (which is also a condition of parole) is a low priority, the DOC engaged in discussions around the issue of increasing collections of restitution for both inmates and parolees.

Members of the work group focused its discussions on allowing the Division of Adult Parole Supervision to contract with private collections agencies to collect restitution. One issue arising from those discussions was the ability of a private collections agency to collect from the offender the fee it charges the state for collecting the restitution. Members of the work group were concerned that this fee might constitute an increase in a sentence after a sentence has been imposed which is prohibited by case law. The work group concluded the additional fee does not constitute an increase in the amount of restitution if: 1) it is specified that the fee is to cover the expenses of the collections agency in collecting the restitution which is due; and 2) the additional fee is not collected by the state nor on behalf of the state but by and for the collection agency.

Recommendations

Definition of “collections investigator.” The work group recommends the following definition of the term “collections investigator.”

“COLLECTIONS INVESTIGATOR” SHALL MEAN A PERSON EMPLOYED BY THE JUDICIAL DEPARTMENT WHOSE PRIMARY RESPONSIBILITY IS TO ADMINISTER, ENFORCE, AND COLLECT ON COURT ORDERS OR JUDGMENTS ENTERED WITH RESPECT TO FINES, FEES, RESTITUTION, OR ANY OTHER ACCOUNTS RECEIVABLE OF THE COURT, JUDICIAL DISTRICT, OR JUDICIAL DEPARTMENT.

Purpose and duties of collections investigators. The work group recommends that language be added to statute to clarify the purpose and authority of collections investigators (see Appendix A for the text of suggested language). Such statutory language should specify the responsibilities of investigators as well as list the various options available to them for investigations and collections.

Private collections investigators and parolees. The work group recommends that the Division of Adult Parole Supervision contract with private collections agencies to enhance the collection of restitution from parolees. The division would turn a case over to a private collections agency when, after 60 days of release on parole, an offender has not made a good faith effort to pay court-ordered restitution. Collections agencies should have access to the appropriate statutory remedies to collect restitution and should be statutorily granted authority to collect from the offender the fee the collection agency charges the state for collecting the restitution.

DEPARTMENT OF CORRECTIONS

Discussion

The work group focused its attention on three categories of DOC inmates and restitution: 1) inmates in DOC correctional facilities; 2) parolees under the jurisdiction of the Division of Adult Parole Supervision and the State Board of Parole; and 3) parolees in community corrections facilities.

Pursuant to statutory requirements, the DOC has implemented programs to hold inmates accountable for their criminal activities including payment of restitution. The DOC has established a Victim Compensation Program in the Division of Correctional Industries for inmates working in federally-certified work programs. Also, the DOC creates an individual restitution account for each inmate upon admission.

The DOC processed \$1,277,039 in restitution during FY 1998-99. This amount includes collections from the Victim Compensation Program, parolees, DOC inmates in community corrections facilities, and inmates in the DOC. Some inmates not in a DOC facility but under DOC's jurisdiction (i.e., in community corrections facilities and on parole) are making direct payments to the courts, and those moneys are not reflected in the amount of restitution processed by the DOC.

Individual restitution accounts. An individual restitution account is created for each inmate during intake. This account serves as a savings account for payment of restitution. The DOC does not require inmates to contribute any specific amount to these accounts. (The amount of restitution owed is normally recorded on the mittimus. The DOC reports that there have been instances where it did not know to collect restitution from an inmate because court staff inadvertently neglected to record the order on the mittimus. See page 27 for further discussion.) Quarterly, the DOC sends payments to the district court of the offender's original case for distribution of funds.

The work group explored options for taking moneys from inmate accounts in order to pay restitution. Inmate accounts consist of wages earned by inmates and money sent from outside sources. Inmate wages range from \$0.25 to \$2.50 per day. Inmates participating in correctional industries programs that make items for sale to the general public earn minimum wage. According to DOC estimates, approximately \$10.5 million flows through inmate accounts annually. Of the \$10.5 million, \$7,388,000 (70 percent) comes from outside sources, particularly family members. Inmates use that money for telephone calls and to buy postage stamps, additional food, hygiene products, and other personal items from the canteen.

The work group considered the implications of seizing moneys sent by outside parties to pay restitution. The work group wondered if, once the family members found out that the money they sent was being paid toward restitution, they would eventually stop sending money.

According to the DOC, seizing moneys sent by outside parties might also affect the canteen and library fund. The canteen and library fund is established pursuant to Section 17-20-127, C.R.S. Inmates contribute to this fund by purchasing items in the canteen (i.e., hygiene products and food and snacks). Any profits that arise from the canteen are deposited in the canteen and library fund and are used to purchase educational and recreational supplies and equipment. Often this includes the funding of large projects. For example, this fund has been used to pay for the construction of gymnasiums and for books and recreational equipment in correctional facilities. The DOC voiced concerns that if inmates' moneys are not available to spend in the canteen, there would be less available in the canteen fund. Projects such as the construction of recreational facilities and the purchase of library books and magazines would have to be funded by additional appropriations from the General Fund. The work group was concerned about the possibility that seizing moneys sent to inmates from family members in order to pay restitution might adversely affect the DOC's budget.

The work group also considered which victim should be paid first when an offender owes restitution to multiple victims from different cases and jurisdictions. The DOC's policy is that, in such cases, any money held in the individual restitution account is applied to the oldest outstanding restitution order.

The Victim Compensation Program. The DOC's Victim Compensation Program (not to be confused with victim's compensation programs discussed on page 11) compensates and assists the victims of crime through participation of inmates in federally-certified work programs such as the saddle shop work program. The Victim Compensation Program is established under the Division of Correctional Industries. Twenty percent of all inmate earnings are deducted from the gross wages of inmates for deposit into the Victim Compensation Fund. Up to 75 percent of an inmate's contribution to the fund can be applied to the payment of victim restitution, and the remainder pays for the expenses of administering the fund. Any moneys remaining in the Victim Compensation Program Fund at the end of any fiscal year are paid to the Victims and Witnesses Assistance and Law Enforcement (VALE) Fund. This program alone collected \$46,150.27 in FY 1998-99.

The Division of Adult Parole Supervision and the State Board of Parole. The State Board of Parole and the Division of Adult Parole Supervision are responsible for two separate functions related to parolees. The parole board, comprised of seven full-time members, has the responsibility for reviewing, holding hearings, and ruling on applications for parole, and for considering requests to revoke parole. The division monitors offenders placed on parole by the board, and is statutorily charged with making sure parolees follow all orders of the board and do not endanger the public.

Parole officers are responsible for collecting court-ordered restitution. However, because the primary responsibility of parole officers is to supervise parolees, parole officers' caseloads dictate that supervising the collection of restitution is a low priority. While the statutes mandate the parole board, as a condition of parole, to require that parolees make restitution payments, the board does not monitor those payments.

Current statutes appear to be in conflict regarding options for the parole board in dealing with parolees who do not meet the conditions of parole. Under the statutes governing revocation proceedings, the board may either revoke the parole of an offender who violates a condition of parole to the DOC, to a community corrections facility, to another private facility under contract to the DOC, or to a county jail. Under the statutes requiring parolees to pay restitution as a condition of parole, the board may either revoke parole back to the DOC or extend the period of parole.

According to the parole board, rarely, if ever, is an offender sent to the board for a parole revocation hearing solely based on nonpayment of restitution. When comparing the cost of revoking parole back to the DOC versus the amount of restitution not collected, the division's and the board's policy has been to not revoke parole solely based on nonpayment since the only placement for revoked parolees who fail to pay restitution appears to be back in a DOC facility.

The work group discussed the concept of a return-to-custody facility as an intermediate sanction for parolees who fail to pay restitution. Inmates in the facility would be required to work or participate in a job program and moneys earned would be used to pay restitution and other costs and fees. However, the work group was concerned with the cost of implementing a new offender-based program or constructing a new facility for this purpose and also recognized that the facilities would, in effect, serve the same purpose as community corrections facilities. To this end, the work group discussed the option of having parolees report to community corrections facilities, in the same manner as probationers report to day reporting centers. The community corrections facility would collect paychecks from parolees in the same manner as it does for residents. However, the work group had many concerns about the lack of statutory authority community corrections officials have over parolees who are not community corrections clients.

The work group also considered giving the division authority to contract with private collections agencies to collect restitution. Such collections agencies would serve as collections investigators similar to those in the Judicial Department. Questions arose about the ability of a private collection agency to charge the offender a fee for collecting the restitution. Case law prohibits an increase in a sentence post-sentencing and an additional fee to collect restitution could be considered a post-sentence increase. However, after consulting statute and case law, the work group concluded that the additional fee does not constitute an increase in court-ordered restitution if: 1) it is specified that the fee is to cover the expenses of the collection agency in collecting the restitution which is due; and 2) the additional fee is not collected by the state nor on behalf of the state but by and for the collection agency.

Recommendations

The work group recommends the following:

- The statutes should be amended to clarify that the parole board may impose intermediate sanctions for parolees who fail to pay restitution as a condition of parole other than revocation back to the DOC.
- The Division of Adult Parole Supervision in the DOC should be allowed to contract with private collection agencies to collect restitution from parolees. If after 60 days of release on parole, an offender has not made a good faith effort to pay court-ordered restitution, the case should be turned over to a private contract collection agency.
- Collection agencies should have access to the appropriate statutory remedies to collect restitution and should be statutorily granted authority hold the offender liable for fees charged to the state for collecting the restitution.
- The General Assembly should study the possibility of having parolees report to community corrections facilities as a day reporting facility to monitor and ensure payment of restitution. Parolees should be required to execute a limited power of attorney and community corrections facilities should manage the parolee's paycheck and distribute restitution and court-ordered fees just as it does for offenders sentenced to the facility.

CHILD SUPPORT ENFORCEMENT REMEDIES FOR RESTITUTION

The Division of Child Support Enforcement (CSE) has numerous remedies available to facilitate increased collections of due and overdue child support. Many of the collections remedies are required by federal law and they are funded by federal dollars. The Division of Child Support Enforcement has support staff and a computer system dedicated to the sole mission of increasing child support collections.

Work Group Discussion

In considering whether some child support enforcement collections tools could be adapted to efforts to increase the collection of restitution, the work group heard from the Division of Child Support Enforcement on the following Child Support Enforcement tools:

- state income tax refund offset;
- federal income tax offset;
- passport denial;
- administrative offset of certain federal payments;
- state vendor payment offset;

- reporting child support obligations to credit reporting agencies;
- lottery winnings offset;
- administrative lien and attachment to collect workers' compensation benefits;
- driver's license suspension;
- state directory of new hires;
- professional and occupational license suspension;
- financial institution data match and resulting notice of lien and levy;
- security, bond, or guarantee;
- contempt of court;
- income assignments to collect wages and unemployment compensation benefits;
- criminal non-support;
- referral to U.S. Attorney's Office for federal prosecution;
- referral to the IRS for full service collection; and
- filing liens on real property.

Some remedies would be unavailable to the state because they focus on federal government functions (i.e., passport denial, administrative offset of certain federal payments, referral to U.S. Attorney's Office for federal prosecution, and referral to the IRS). Yet, the work group considered how some of the tools used to collect child support might also be used to collect restitution.

Because many of the child support enforcement tools are required by federal law, and because some of those tools contain information that, by law, can only be used for child support enforcement purposes (the federal new hires list for instance), the work group did not consider asking the Division of Child Support Enforcement to collect restitution. However, cognizant of the costs involved in developing new systems to take advantage of some of these tools to collect restitution, the work group was left with figuring out how to use some of the same tools and implement them within existing systems.

The work group concluded that expanding the use and role of collections investigators in the Judicial Department might be the most immediate way to adopt some of the child support enforcement remedies for collecting restitution (see page 35 for further discussion of expanding the use and role of collections investigators). The work group concluded that, for the long term, restitution centers, possibly staffed by collections investigators, might be a way to build a system of collecting restitution that includes civil remedies as well as adopting child support enforcement remedies.

Recommendations

The work group recommends the following:

- The statutes should make any and all appropriate child support enforcement tools available to those responsible for collecting restitution (for instance, under current provisions, the Judicial Department may be able to match its list of those who owe restitution with the Colorado Department of Labor's new hires list).
- Understanding that one of the reasons child support enforcement collections tools work is because there is one state agency responsible for its administration, the work group recommends that where existing systems can collaborate and communicate, child support enforcement remedies should be either used or copied in the appropriate existing state agency in order to collect restitution. It is not the intent of the work group that new divisions or agencies are created to implement these remedies for the collection of restitution. Confidentiality must be maintained when the systems collaborate.
- In using the child support enforcement remedies that entail using data from child support enforcement, there will be instances in which an offender owes both child support and restitution. The work group concluded that the General Assembly should decide the other priority order of payment for other obligations such as child support and cost of incarceration (excluding court fines and fees).
- Child support enforcement tools should be made available to collections investigators in the Judicial Department. This would require that the number of and functions of collections investigators, now housed in each judicial district, be expanded.

RESTITUTION FUND

Discussion

Early in its discussions, the work group recognized that courts should order restitution for the full amount it would take to compensate the victim and that orders of restitution should be a lifetime obligation, i.e., orders of restitution should stand until the obligation is met. Obligations to pay restitution should not end when an offender completes his or her period of supervision.

While discussing current statutory provisions allowing a criminal restitution order to be converted to a civil judgement, one of the non-work group member participants presented the work group with the idea that victims who are owed restitution should be fully

compensated for their losses as soon as possible. He further suggested that the state should set up a restitution fund, similar to the victim's compensation and VALE funds, from which victims would be paid restitution.

The member of the work group representing victims, based on her experience as a victim and as a district court clerk, had been working on this same idea and she submitted a proposal to the work group. The work group agreed that while there are many serious questions that need answers, there is merit behind the idea of an offender-funded restitution fund from which victims are immediately reimbursed for their losses instead of receiving small payments over a long period of time.

The proposal for the state restitution fund contained the following elements:

- courts would continue to order defendants to pay restitution at sentencing, however, the victim would be paid that amount from the state fund and the defendant would be responsible for making restitution payments to the state fund;
- offenders would pay a surcharge on each conviction in addition to the amount owed in restitution in order to fund the restitution fund;
- upon sentencing the offender, victims would be limited to a payment of up to \$5,000 in restitution from the fund and any additional restitution owed would be collected from the offender who would then be making payments both to the fund and to the victim;
- interest would accrue on unpaid restitution obligations as an incentive to pay the restitution off quickly;
- victims would be compensated more fairly and efficiently since they would be paid in one lump sum from the fund as opposed to being paid smaller amounts over a longer period of time as the offender is able to or decides to pay;
- victims in cases involving large sums of money would receive substantial compensation quickly, and in cases involving multiple victims, victims would not have to wait their turn to receive payment;
- citizens could make donations to the fund via a State Income Tax checkoff; and
- the state would have more of a vested interest in aggressive restitution collections.

The work group had many questions and concerns about the proposal including the following:

- how much time would be necessary to fully fund the program and how could the state ensure the fund would always be replenished and available to victims?
- the average order of restitution is between \$1,000 and \$3,500, and felony offenders would pay a surcharge of \$125 into the fund. Would the amount collected in restitution and surcharges plus interest cover the amount paid out in restitution to make the fund a viable one?
- would the cost of collections efforts and administration of the program make the program cost effective?
- how could the state ensure that victims were not submitting "bogus" claims to this fund and would the promise of guaranteed restitution payments make a difference in how prosecutors and defense attorneys plea cases or assess the amount of restitution requested? and
- how would the requirements of the Taxpayer's Bill of Rights (TABOR) impact creating such a fund? Could creation of the fund somehow be interpreted as an entitlement program? Could a restitution fund, in addition to the victim's compensation and VALE funds be exempted, by voter approval, from the provisions of TABOR?

Recommendation

Based on the many serious questions raised by the proposal, the work group agreed that victims should be paid as much restitution as they are owed as quickly as possible. The work group believes the proposal has merit and recommends that the General Assembly give the idea further study.

DISTRIBUTION OF PAYMENTS

This section contains an explanation of and recommendations on:

- the priority order of distribution of collected restitution.

DISTRIBUTION OF PAYMENTS

Discussion

Five different statutes in two titles list different orders of priority for distributing payments received from offenders (a sixth statute gives the Executive Director of the DOC the authority to establish the priority order of distribution of payments received from inmates in correctional industries programs). Under current law, restitution is the first priority in each list. Each list also requires payments towards the support of dependents or child support and each list related to incarceration requires payments related to the cost of incarceration. However, these lists contain different priority items as well as different numbers of items, i.e., not all items are on each list.

Each of the five order of priority lists are below.

- ***Conditions of probation.*** The priority order for any payments received by a defendant under probation is as follows:
 - restitution or reparation;
 - support of dependents and meeting other family responsibilities including payment of a current child support order; child support arrearages;
 - child support debt order;
 - spousal maintenance;
 - costs of court proceedings or costs of supervision of probation, fines or fees imposed by the court; and
 - repayment of all or part of any reward paid by a crime stopper organization.
- ***Work and education release programs.*** The court is required to order disbursement of funds deposited in payment by the offender to the court registry in the following order:
 - restitution;
 - legal obligations of support for dependents;
 - probation supervision costs;
 - room, board, and work supervision inside and outside the county jail; and
 - fines or fees imposed by the court.
- ***Agreements for the employment of inmates by private entities.*** Out of the wages held in trust for an inmate, the DOC must deduct periodically for the following purposes and in the following priority order:

- compensation of the victim including medical expenses, loss of earning power, and any other pecuniary loss;
 - voluntary payment of amounts to the VALE fund;
 - payment for the support of the inmate's dependents as deemed appropriate by the executive director of the DOC; and
 - payment of incidental expenses of the inmate while the inmate is still in custody.
- ***Employment of county prisoners.*** Wages and salaries of employed prisoners are to be distributed by the sheriff for the following purposes in the following order:
 - restitution or reparation;
 - the board of the prisoner;
 - the supervision and administrative services provided to the prisoner during home detention;
 - necessary travel expenses to and from work and other incidental expenses of the prisoner;
 - support of the prisoner's dependents;
 - payment of the prisoner's obligations acknowledged in writing or which have been reduced to judgement; and
 - the prisoner upon discharge.
 - ***Community corrections programs.*** Moneys earned by an offender must be collected by the program and distributed in the following order of priority:
 - court-ordered restitution;
 - court-ordered support of the offender's dependents;
 - fines, fees, surcharges, and other court-ordered obligations; and
 - the VALE fund in that judicial district.

Policy and programs. The work group discussed how changing the priority order of payment might affect restitution, the VALE fund, and the victim's compensation fund. However, the work group did not have enough data to fully answer that question. (For an explanation of the victim's compensation and VALE funds, see page 11).

Although the statutes spell out the above-listed priority orders, and some of those lists do not include fees or surcharges (victim's compensation and VALE), the work group learned that, procedurally, with regards to these three priorities, courts in Colorado currently distribute offender payments in the following order: the victim's compensation fund, the VALE fund, and restitution. According to the Division of Criminal Justice, during 1998, the VALE fund paid out more than eight million dollars to victims throughout the state. During October 1997 and September 1998, the victim's compensation fund paid out \$9,280,693 in services to victims.

Data. To assist the work group in its discussion of how changing the priority of distribution order might affect restitution and the VALE fund and victim's compensation funds, the Judicial Department provided some data on collection ratios for those funds (see Appendix B on page 85.) The Judicial Department was not able to generate the data for years prior to 1996. The data, summarized in Table 3 below, show that when comparing what was assessed with what was collected, larger percentages of victim's compensation and VALE funds were collected, or that courts are distributing more moneys collected from offenders to those funds, than restitution.

| TABLE 3 | | | | | | |
|---|---------------------------|-------------|--------------------|---------------------------|-------------|--------------------|
| Collection Ratios (Amount Assessed vs. Amount Collected) | | | | | | |
| | 1996 | | | 1998 | | |
| | Victim's Comp. | VALE | Restitution | Victim's Comp. | VALE | Restitution |
| County Court | 81.3% | 81.2% | 63.9% | 86.7% | 83.8% | 62.2% |
| District Court | 54.7% | 47.2% | 23.2% | 63.7% | 57.5% | 31.3% |
| Combined | 68.2% | 68.8% | 26.8% | 75.4% | 74.2% | 34.7% |

Source: The Judicial Department

Note: This data was sampled from the following counties: Adams, Arapahoe, Boulder, Denver District Court, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, and Weld

The discussion to re-prioritize the order of distribution was based on the theory that more victims would be made whole, and would be made whole faster, if collected moneys were distributed to victim restitution first. However, the work group heard that to drop the current level of funding for the services provided with victim's compensation and VALE funds would leave a big hole in services for victims. While restitution may allow a victim to replace items that were stolen, restitution does not cover the types of services for as many victims as victim's compensation and VALE funds do. Victim's compensation and VALE funds provide services to victims regardless of whether a defendant is ordered to pay restitution. Further, changing the priority order would not only affect the amount in surcharges collected from offenders and credited to the victim's compensation fund, but would also affect the amount of matching funds from the federal government. The federal government pays a 40 percent match of all victim's compensation moneys paid out to victims. In short, the work group agreed that more victims are served by victim's compensation and VALE programs, and that fewer victims would be served if restitution was the first distribution priority.

The work group only considered the priority order of the victim's compensation and VALE funds and restitution. However, as noted above, several statutes dictate different priority orders for family and child support obligations, costs of incarceration or supervision,

finances and other surcharges. The work group concluded that since prioritizing the other obligations was not its charge, the General Assembly should decide all other payment priority orders. Court fines and fees should be prioritized by the Chief Justice of the Supreme Court.

Recommendation

The work group recommends that all priority orders be reordered and consistent throughout the statutes. Regarding victim's compensation, VALE, and restitution only, the priority order of distribution of moneys received from offenders should be as follows:

- victim's compensation;
- VALE; and
- restitution.

The work group recommends that these three priorities be kept together as a block in this order and that other priorities be ordered, before and/or after, around this block of three priorities. The General Assembly should prioritize all obligations aside from court fines and fees which should be prioritized by the Chief Justice of the Supreme Court.

CONVERTING CRIMINAL RESTITUTION ORDERS TO CIVIL JUDGEMENTS

This section contains an explanation of and recommendations on:

- converting criminal restitution orders to civil judgements.

CONVERTING CRIMINAL RESTITUTION ORDERS TO CIVIL JUDGEMENTS

Discussion

Under current law, an order of restitution is a final judgement in favor of the state and the victim and may be enforced by either the state or the victim in the same manner as a judgement in a civil action (Section 16-11-101.5, C.R.S.). Under this provision, victims who are owed restitution may go to court to file a lien against property and may attach wages and other assets and may also take advantage of any other civil remedies allowed under the statutes. However, the statutes do not provide a procedure for courts to record a criminal order as a civil judgement, nor do they provide a procedure for victims to follow to take advantage of civil remedies.

The work group had two main concerns regarding current law:

- different jurisdictions across the state handle this provision differently. Some jurisdictions enter a separate civil judgement which must be handled in civil court, other jurisdictions keep the criminal order under the jurisdiction of the criminal court. Victims are not given clear direction on whether to intervene in the criminal proceeding or file a separate lawsuit in civil court to take advantage of civil remedies; and
- victims must be proactive in taking advantage of this provision of the law and in the process are often re-victimized by having to again confront the offender. Most victims do not know they may take advantage of civil remedies or how to do so. Unless a victim is familiar with the court system, victims must incur additional costs to hire an attorney to file civil liens or garnishments. Further, victims are required to pay court fees to obtain copies of judgements and to file papers for liens or garnishments.

The overriding concern of the work group was that victims should not be put in a position of having to again face the offender in court or having to fight over what assets the offender may or may not have. Victims should not have to go out of their way to collect money that is owed to them. Though the work group had no data to indicate how many victims invoked this provision of the statute, the entire work group was of the opinion that victims are more likely to leave collections to the courts as opposed to taking advantage of civil remedies on their own.

Other states. As the work group considered civil remedies to collect criminal restitution, they sought ways to do so without putting the burden on the victim. Staff researched other states to find out how they take advantage of civil remedies. Similar to

Colorado, many states provide for criminal restitution orders to be entered as civil judgements at sentencing. However, a few states provide for either a state agency or a collection agency to invoke those civil remedies.

- **California** — Criminal restitution orders are automatically entered as civil judgements. Upon the victim's request, the court must provide the victim with a certified copy of the order and the victim then has access to all resources available under law to enforce the restitution order including access to the offender's financial record, use of wage garnishment and liens, information about the defendant's assets, and ability to apply for any fund established for compensating victims in civil cases. In addition, California courts provide to victims a detailed pamphlet which informs them, step-by-step, of what to do to get access to financial records and invoke civil remedies. The pamphlet explains where a victim can go to get financial information on the defendant and explains how the victim can place a lien on the defendant's personal property and business assets, as well as obtain a writ of execution that will allow the victim to attach wages, bank accounts, business receipts, and personal property.
- **Florida** — Upon motion by the state, victim, any aggrieved party, or upon its own motion, the court must enter a civil restitution lien order in favor of the victim. The court retains continuing jurisdiction over the convicted offender for the sole purpose of entering civil restitution lien orders. The lien attaches not only to the current assets of the offender, but to future assets or windfall proceeds.
- **Kansas** — Kansas statutes require criminal orders of restitution to be recorded as civil judgements. When, after 60 days from the date restitution was ordered, a defendant is found to be in noncompliance with the order, the court assigns the case to the Attorney General who contracts with either a private collection agency, a private attorney who specializes in collections, or court trustees to collect the restitution (the Attorney General charges a 1 percent administration fee). These private collections attorneys and agencies, as well as court trustees, are also contracted to collect fines, fees, and costs assessed by the court. Collections agencies are allowed to impose a surcharge and/or interest (up to 33 percent) calculated on the amount of each payment (as opposed to the amount owed). Upon receiving a case from the Attorney General, the collection agency notifies the victim that it has been assigned the case and will try to collect the restitution. The victim is asked whether the agency should proceed or not. Most victims ask the agency to proceed.
- **Utah** — In Utah, the court, upon motion by any party including the Department of Corrections, may convert a criminal order of restitution to a civil judgement. (Utah has combined probation and parole supervision under the jurisdiction of the DOC.) Once the civil judgement has been entered, the DOC can notify the State Office of Debt Collection (this office collects all fines and fees, including restitution, owed to the state.) In practice, the DOC usually only sends cases

to the office of debt collection when probation or parole supervision is terminated but restitution is still owed. The office then contracts with private collection agencies to collect the balance owed. Collection agencies use all options available including wage freezes in order to collect the restitution. The private collection agencies charge the offender a combined surcharge and interest rate of 18 percent on the restitution owed. Utah's probation and parole officers use the 18 percent interest/surcharge issue as leverage against offenders to encourage them to pay off restitution before the end of the period of supervision. Utah's DOC has an in-house database or Offender Obligation Center in which all court obligations are listed. Each offender receives a monthly statement listing the amount owed and the balance. Parole and probation officers monitor the offender's payments. Payments made are collected by the DOC and disbursed to the victim by the DOC.

- **Virginia**— Virginia's statutes require court clerks to submit to the Department of Taxation, the State Compensation Board, and the Commonwealth Attorney (district attorney) a statement of all fines, costs, forfeitures, and penalties which are delinquent for more than 30 days including court-ordered restitution. Upon receiving the order, the Commonwealth Attorney is required to make a determination on the practicality and the economic feasibility of collecting the money owed. If the Commonwealth Attorney decides not to collect the money, he or she can do the following: 1) contract with private attorneys or collection agencies; 2) enter into an agreement with a local governing body to collect the money; or 3) use the services of the Department of Taxation to collect the money. However, while the Department of Taxation has had great success in collecting fines and other fees and costs owed to the state, contracts between Commonwealth Attorneys and the Department of Taxation stipulate that the Department shall collect no restitution. The state imposes a 14 percent surcharge to collect debts from offenders and, for the purposes of restitution, the courts have interpreted the surcharges as additional punishment after sentencing. The Virginia General Assembly has been reluctant to make the statutory change necessary to rectify this situation.

Recommendations

While the work group agreed it wanted to see a procedure in Colorado to allow victims to pursue civil remedies to collect restitution and not put the onus on the victim to pursue those remedies, the work group makes no formal recommendation on this matter. However, a subgroup of the work group met and came to some conclusions after the work group's final meeting.

- Upon entering an order for restitution in criminal court, the court should also issue a civil judgement in the same case and amount. The victim should be able to request a transcript of the judgement from the clerk of the court which should

be provided free of charge. A victim should be able to get the judgement recorded in any clerk and recorder's office, also free of charge, for the purpose of filing liens against real or personal property.

- A separate civil filing should not be required in order for the state or the victim to invoke civil remedies. However, a victim should not be precluded from filing a separate civil action.
- A court should be able to amend a judgement at any time if additional restitution is later determined, or if the amount of restitution is amended under an agreement with the offender and the prosecution, or if the court finds that the victim has obtained a judgement in a separate action for damages covered by the restitution order.
- When the court enters an order for restitution and the defendant claims he or she is unable to pay the entire amount at the time the order is pronounced, the defendant should be required to report to a collections investigator for a financial investigation and determination of an appropriate payment schedule. In enforcing the order, the collections investigator responsible for monitoring the defendant's payments should take advantage of a host of civil remedies including filing a lien against the defendant's property and searching, attaching, and seizing the defendant's assets as well as attaching the offender's earnings which is allowed under current statutes (see page 35 for further details on collections investigators).

GARNISHMENT AND COLLECTIONS

This section contains an explanation of and recommendations on:

- garnishment and collecting restitution.

GARNISHMENT AND COLLECTIONS

Discussion

Under current law (Section 16-11-101.5, C.R.S.), any order of restitution is a final judgement in favor of the state and the victim. The state or the victim may enforce the judgement in the same manner as a judgement in a civil action. Remedies available in civil actions include but are not limited to attaching assets and wages (garnishment) as well as filing a lien against property. Current law (Section 16-11-101.6, C.R.S.) further provides that on past due orders of restitution, the court may direct that up to 50 percent of a defendant's earnings be garnished to pay restitution.

According to the Judicial Department, collections investigators issued approximately 6,000 wage attachments in FY 1998-99 with a high success rate. The work group saw the use of wage garnishment for past due restitution as one tool in a list of tools that are and should be available for collecting restitution. To this end, the work group looked at two specific items related to garnishment and collections: 1) the current statutory framework for converting criminal orders of restitution into civil judgements (see page 55 for a detailed discussion and recommendations); and 2) adopting the appropriate remedies used by child support enforcement units in collecting child support for collecting restitution (see page 41 for a detailed discussion and recommendations).

Recommendation

The work group makes no specific recommendation for changes or additions to the current statute providing for garnishment of wages for past due restitution. However, the work group did agree that existing civil remedies, garnishment for past due restitution, and appropriate child support enforcement remedies should be available and fully utilized. The work group further agreed that probation officers and parole officers should be trained in the availability of these tools to collect restitution. In addition, the work group agreed that the number and role of collections investigators should be expanded to include use all of these remedies in collecting restitution (see page 35 for a detailed discussion and recommendation.)

RESTITUTION FOR JAILED OFFENDERS

This section contains an explanation of and recommendations on:

- ordering restitution for a sentence to jail only.

RESTITUTION FOR JAILED OFFENDERS

Discussion

Section 16-11-102, C.R.S., requires probation officers to prepare presentence investigation reports for the courts to determine the appropriate sentence for an offender. The presentence report is to include information on the victim and on any restitution owed to the victim. While this law directs the court to require all offenders guilty of a felony or a misdemeanor to pay restitution to victims, this section also presumes those offenders will be supervised by a probation officer. However, offenders who receive a sentence to jail without any probation supervision do not have a probation officer, and the Colorado Court of Appeals has held that restitution may not be ordered if the defendant is given a sentence without work release, probation, or parole (*People v. Young*, 710 P.2d 1140, Colo. App., 1985).

The work group did not spend much time discussing this issue, concluding that the General Assembly never intended that offenders who receive a sentence to jail without supervision not be ordered by the court to pay restitution. While some jurisdictions do order restitution for offenders with a sentence to jail only, the statute should be clarified so it can be implemented consistently. The work group did not discuss this issue, but there is a question of who would be responsible for collecting restitution from these non-supervised and jailed offenders.

Recommendation

The work group recommends that the statutes clarify that all offenders, including those sentenced to jail without supervision, be ordered by the court to pay any restitution for damages caused by the offender.

PROMISING PRACTICES

This section contains an explanation of and recommendations on:

- restitution centers; and
- mediation and restitution.

RESTITUTION CENTERS

Discussion

Colorado currently lacks centralized services for victims of crime for whom restitution has been ordered. This lack of centralization results in victims' uncertainty and inconvenience regarding whom to contact for assistance. The work group discussed the establishment of restitution centers as a means of assisting both victims and offenders.

The traditional model for restitution centers consists of an offender-based, intermediate sanction among other community corrections programs such as halfway houses and work furlough programs. Although Colorado does not formally have restitution centers, Colorado's community corrections programs function in a similar fashion. For example, offenders are required to reside in the facility, paychecks are sent or given to facility personnel, and the state contracts for services with private providers.

A new initiative. The work group discussed the importance of providing more victim-oriented services. One means of doing so is to create a restitution center program that has the victim as its focus as opposed to a residential facility for offenders. The types of services sought out by victims include those listed below.

- ***Collections investigators.*** As discussed on page 35, collections investigators provide an important service. Collections investigators could serve as the single source for victims to contact to get information on services available and to keep track of the status of the restitution owed them. One of the important services that the investigator would provide is to complete asset searches and assess offenders' ability to pay restitution and, in turn, share that information with victims.
- ***Victim assessment.*** An important post-crime activity is determining the services necessary to assist the victim. A restitution center would provide a location for a formal assessment of victim needs to occur. Center personnel would conduct the assessment and evaluate results.
- ***Victim services.*** Victims' needs vary from case to case. Many victims of crime are confronting the judicial system and the aftercare system for the first time and they find it confusing and frustrating. Determining the types of services needed, the location of such services, and the means by which to access such services depends upon the individual circumstances of each case. For example, restitution center personnel would be available to inform the victim

on how to convert a criminal order to a civil order, how to get counseling, and the like.

- **Mediation programs.** Mediation serves an important role in restorative justice (see below for an explanation of these programs). The goal of mediation is to restore the victim and the community through dialogue. A restitution center could be a logical location for such interactions to occur.
- **Services for offenders.** The work group agreed that offenders have a place in a victim-oriented restitution center model. The provision of centralized services for offenders is meant to expedite offenders' return to the work place and to provide training in basic life skills such as money management. Restitution center employees could also direct offenders to the necessary counseling services, e.g., drug/alcohol counseling or anger management and serve as a liaison between victims and the Judicial Department.

The work group discussed the fact that the types of services mentioned above already exist, but they exist in a noncentralized fashion. Placing existing resources within a judicial district into a centralized location would be a change from current practice. This option requires increased collaboration among parties already involved in restitution services. The work group acknowledged that some training of center personnel would be required, and suggested that such training needs could be provided by members of the community on a volunteer basis.

Recommendation

The work group recommends that two pilot restitution centers be developed, one in a metropolitan judicial district and one in a rural judicial district. The centers should be developed within the framework identified in the "new initiative" discussion noted above. Some victim services under this proposal would either be duplicated or would be removed from their present location to be housed in the restitution center. The work group makes no recommendation on this issue.

MEDIATION AND RESTITUTION

Discussion

As part of the work group's effort to look at ways to increase collections of restitution, from juvenile offenders in particular, the work group heard from the director of the Face-to-Face program in the 18th Judicial District. The Face-to-Face program is one of several mediation programs that have been established in several judicial districts across the state. Most of the programs focus on non-violent juvenile offenders, but others serve adult

probationers. The purposes of these programs are to encourage a dialogue between the offender and the victim to: 1) facilitate the healing of the victim by addressing the victim's psychological and emotional wounds; and 2) hold the offender accountable for the crimes committed. While the dialogue between the victim and offender is the primary purpose of these programs, addressing the issue of making the victim whole with restitution is another important component.

In the Face-to-Face program, an appropriate and willing non-violent juvenile offender meets with the victim in order to dialogue about the harm the offender caused the victim and, in most cases, to mediate how restitution will be paid. The Face-to-Face program recognizes the dialogue between victim and offender as very important because, when the offender admits guilt, expresses remorse, and wants to "make things right," the victim can feel free to ask questions about the offender's motivation for the crime he or she committed. This process is viewed by the Face-to-Face program as, in many ways and for most victims, the most important part in the victim's healing process, i.e., making the victim whole. The director of the Face-to-Face program testified that for most victims, knowing why the offender committed the crime and being able to tell the offender about the full impact of the offense is more important than restitution.

The work group's chief concern was that mediation not be perceived as a plea-bargaining tool. There was strong objection on the part of some work group members to the use of the word "mediation," and work group members acknowledged the fact that a criminal offense cannot be mediated. However, the work group heard that in the Face-to-Face program, offenders who want to participate in the program because they see it as a "good deal" or as a way to get out of paying restitution are not accepted for the program. An offender is allowed to participate in the program only when he or she: 1) admits guilt; 2) expresses remorse and a "desire to make things right"; and 3) accepts responsibility for the offense.

In practice, there are two parts to these programs: 1) a dialogue between the victim and the juvenile; and 2) when appropriate, mediating how the court-ordered restitution will be paid or how community service will be served. While the primary goal of the Face-to-Face program is to give the juvenile and the victim an opportunity to dialogue about the offense, in some cases, the juvenile and the victim come to an agreement for the juvenile to make reparations to the victim. In one example provided by the victim member of the task force, the victim and one of the juvenile offenders involved in the case agreed that as part of the restitution payment, the juvenile would perform weekly yard work for the victim for a specified period of time.

Recommendation

While the work group recognized that mediation programs are useful in serving both the victim and the offender, they also recognized that mediation is a separate issue from restitution. While the programs address the issue of restitution, the focus is on the dialogue between the victim and the offender. This was not in the purview of the legislative charge.

However, the work group recommends a statement of legislative intent, similar to the legislative declaration in the Children's Code (Section 19-2-102 (2), C.R.S.), that judicial districts are encouraged to develop programs that, in the name of facilitating restoration of the victim and the community, encourage a dialogue between the victim and the offender while also addressing the issue of restitution. The work group does not recommend that such programs be mandated nor that the statutes spell out specific components of such a program nor how they should be operated. The programs should be community-based in order to meet the needs of the particular community. The work group recommends that the programs be developed for, in particular, adult probationers. The work group did not address using these programs for DOC inmates though the work group heard from the DOC that the DOC is developing a victim-offender dialogue program.

ACCOUNTABILITY

This section contains an explanation of and recommendations on:

- freezing a defendant's assets.

FREEZING OF ASSETS

Discussion

Under criminal forfeiture laws in Title 18, the court may seize the assets of a defendant but only after conviction. Further, the court may only seize those assets that are directly related to the criminal episode.

The work group found that, particularly in white-collar crimes involving large sums of money, defendants often sell off or transfer their assets so that they cannot be seized or attached after conviction. While current statutory tools allow seizure of assets, the statutes do not prevent defendants from transferring or liquidating assets so that by conviction, there are no assets to seize in order to pay court-ordered restitution.

Recommendation

The work group recommends that, for purposes of restitution, upon a petition by the district attorney or the victim, the court freeze a defendant's assets either at the time the case is filed or at arraignment. In order to freeze the assets the court would have to perform an asset search which would involve searching records in jurisdictions other than the charging jurisdiction for assets such as real property. The defendant would be prevented from selling or transferring assets for the period the case was still active. Upon conviction, the court would enter an order of restitution and then direct that certain of the offender's assets be liquidated in order to pay off restitution and other costs.

APPENDIX A

This appendix contains suggested statutory language for the Collection Investigator Program.

APPENDIX A

WHEN THE COURT ENTERS ITS ORDER FOR RESTITUTION, THE COURT MAY DIRECT AS FOLLOWS:

- A. THAT THE DEFENDANT PAY THE ENTIRE AMOUNT OF THE RESTITUTION AT THE TIME THE RESTITUTION ORDER IS PRONOUNCED;
- B. IF THE DEFENDANT CLAIMS HE OR SHE IS UNABLE TO PAY THE ENTIRE AMOUNT OF THE RESTITUTION AT THE TIME THE RESTITUTION ORDER IS PRONOUNCED, THAT THE DEFENDANT REPORT TO THE COLLECTIONS INVESTIGATOR FOR A FINANCIAL INVESTIGATION AND DETERMINATION OF AN APPROPRIATE PAYMENT SCHEDULE, EXCEPT THAT IF THE SENTENCE BEING IMPOSED IS A DIRECT SENTENCE TO THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF CORRECTIONS SHALL ASSIGN A DESIGNATED OFFICIAL TO DETERMINE A PAYMENT SCHEDULE;
- C. IF MORE THAN ONE DEFENDANT IS ORDERED TO MAKE PAYMENTS TO THE SAME PERSON, THAT EACH DEFENDANT BE RESPONSIBLE FOR A CERTAIN PORTION OF THE RESTITUTION, OR THAT THE RESTITUTION BE A JOINT AND SEVERAL OBLIGATION.

UPON REFERRAL OF A DEFENDANT TO THE COLLECTIONS INVESTIGATOR, THERE SHALL BE AN ADDITIONAL FEE OF TWENTY-FIVE DOLLARS ADDED TO THE DEFENDANT'S OBLIGATIONS. SUCH FEES SHALL BE PAID AFTER RESTITUTION, AND SHALL BE CREDITED TO THE JUDICIAL COLLECTION ENHANCEMENT FUND ESTABLISHED IN SECTION 16-11-101.6(2). THE COLLECTIONS INVESTIGATOR SHALL CONDUCT A FINANCIAL INVESTIGATION OF THE DEFENDANT, AND SUCH INVESTIGATION MAY CONSIST OF, BUT NOT BE LIMITED TO, THE FOLLOWING:

- A. WRITTEN FINANCIAL AFFIDAVIT AND DISCLOSURE OF PERSONAL, HOUSEHOLD, AND BUSINESS INCOME, ASSETS, AND LIABILITIES;
- B. ORAL EXAMINATION OF THE DEFENDANT'S FINANCIAL CIRCUMSTANCES;
- C. RESEARCH AND VERIFICATION OF ANY INFORMATION RELATED TO THE DEFENDANT'S FINANCIAL CIRCUMSTANCES;
- D. REQUIREMENT THAT THE DEFENDANT PROVIDE THE FOLLOWING:
 - 1. PAYROLL STUBS;

2. FINANCIAL INSTITUTION ACCOUNT NUMBERS;
3. STOCK CERTIFICATES;
4. DEEDS;
5. TITLES;
6. STATE AND FEDERAL TAX RECORDS; AND
7. OTHER BOOKS, PAPERS, DOCUMENTS, OR TANGIBLE THINGS
NEEDED FOR THE DETERMINATION OF THE DEFENDANT'S
FINANCIAL CIRCUMSTANCES.

- E. IN THE CASE OF JUVENILE DEFENDANT, THE JUVENILE'S LEGAL
GUARDIAN MAY BE REQUIRED TO UNDERGO A FINANCIAL
INVESTIGATION.

FOR PURPOSES OF CONDUCTING FINANCIAL INVESTIGATIONS, THE COLLECTIONS
INVESTIGATOR SHALL BE AUTHORIZED TO USE DATA MAINTAINED BY OTHER STATE AGENCIES
INCLUDING, BUT NOT LIMITED TO, WAGE DATA, NEW HIRE DATA, EMPLOYMENT DATA, AND
INCOME TAX DATA. THE JUDICIAL DEPARTMENT MAY ENTER INTO AGREEMENTS WITH SUCH
STATE AGENCIES FOR THE USE OF SUCH DATA.

THE COLLECTION INVESTIGATOR SHALL KEEP WRITTEN FINDINGS OF THE FINANCIAL
INVESTIGATION, WHICH SHALL NOT BE OPEN TO PUBLIC INSPECTION EXCEPT BY ORDER OF THE
COURT. SUCH RECORDS MAY BE MADE AVAILABLE TO PRIVATE COLLECTION AGENCIES OR
OTHER THIRD PARTIES THAT HAVE CONTRACTED WITH THE COURT TO COLLECT RESTITUTION.

THE COLLECTION INVESTIGATOR SHALL ESTABLISH A PAYMENT SCHEDULE WITH THE
DEFENDANT, AND MAY DIRECT AS FOLLOWS:

- A. THAT THE FULL AMOUNT OF RESTITUTION BE PAID FORTHWITH;
- B. THAT THE FULL AMOUNT OF RESTITUTION BE PAID IN PARTIAL
PAYMENTS AT DESIGNATED INTERVALS; OR
- C. THAT THE FULL AMOUNT OF RESTITUTION BE PAID AS A SINGLE
PAYMENT ON A DATE CERTAIN.

ADDITIONAL CONDITIONS TO THE PAYMENT SCHEDULE MAY INCLUDE THE
FOLLOWING:

- A. IF THE DEFENDANT IS UNEMPLOYED, THAT THE DEFENDANT SEEK
GAINFUL EMPLOYMENT AND REPORT TO THE COLLECTION
INVESTIGATOR ON SUCH EFFORTS;

- B. THAT THE DEFENDANT SHALL OBTAIN APPROVAL FROM THE COLLECTION INVESTIGATOR PRIOR TO INCURRING ADDITIONAL DEBTS OR FINANCIAL OBLIGATIONS;
- C. THAT THE DEFENDANT PROMPTLY REPORT TO THE COLLECTION INVESTIGATOR ANY CHANGES IN INCOME, ASSETS, OR OTHER FINANCIAL CIRCUMSTANCES.

THE COLLECTION INVESTIGATOR SHALL MONITOR THE DEFENDANT'S PAYMENTS, AND MAY MODIFY THE PAYMENT SCHEDULE BASED UPON CHANGES IN THE DEFENDANT'S FINANCIAL CIRCUMSTANCES. TO ENFORCE ORDER FOR PAYMENT, THE COLLECTION INVESTIGATOR MAY:

- A. PERFORM AN ONGOING FINANCIAL INVESTIGATION (AS OUTLINED PREVIOUSLY) OR CONTRACT WITH A THIRD PARTY FOR SUCH INVESTIGATION;
- B. ISSUE AN ATTACHMENT OF EARNINGS, AS DEFINED IN SECTION 16-11-101.6 (4), C.R.S.;
- C. IMPOSE A LATE FEE EACH TIME A PAYMENT IS PAST DUE, UNDER SECTION 16-11-101.6 (1), C.R.S.;
- D. ISSUE AN ATTACHMENT OF THE DEFENDANT'S BANK ACCOUNT OR OTHER ASSETS;
- E. NOTIFY THE DEPARTMENT OF REVENUE TO PERFORM AN OFFSET AGAINST THE DEFENDANT'S STATE INCOME TAX FUND;
- F. NOTIFY THE DEPARTMENT OF REVENUE TO INSTITUTE A LOTTERY WINNINGS OFFSET;
- G. NOTIFY THE DEPARTMENT OF REVENUE TO INSTITUTE A STATE VENDOR PAYMENT OFFSET;
- H. NOTIFY THE MOTOR VEHICLE DIVISION TO PLACE A HOLD ON THE ISSUANCE OR RENEWAL OF THE DEFENDANT'S DRIVER'S LICENSE;
- I. FILE A LIEN AGAINST THE DEFENDANT'S PROPERTY WITH THE CLERK AND RECORDER IN ANY COUNTY;
- J. ATTACH AND SEIZE THE DEFENDANT'S ASSETS USING LAWFUL PROCESSES, AND EXECUTE THE SALE OF SUCH ASSETS WITH THE PROCEEDS TO BE APPLIED TO UNPAID RESTITUTION;

- K. ADD ALL COLLECTION COSTS AND FEES INCURRED TO THE DEFENDANT'S OBLIGATION;
- L. REPORT THE JUDGMENT TO A CREDIT REPORTING AGENCY;
- M. ISSUE AN ADMINISTRATIVE LIEN AND ATTACHMENT ON THE DEFENDANT'S WORKERS' COMPENSATION BENEFITS (SEE CHILD SUPPORT ENFORCEMENT STATUTES);
- N. NOTIFY ANY STATE PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD TO INSTITUTE A SUSPENSION OF THE DEFENDANT'S LICENSE;
- O. PARTICIPATE IN THE FINANCIAL INSTITUTION DATE MATCH PROGRAM ESTABLISHED FOR THE ENFORCEMENT OF CHILD SUPPORT;
- P. CONTRACT WITH A PRIVATE THIRD PARTY FOR COLLECTIONS, IN WHICH SUCH COSTS MAY BE ADDED TO THE AMOUNT OWED BY THE DEFENDANT;
- Q. ISSUE A NOTICE FOR THE DEFENDANT TO APPEAR IN COURT, IN WHICH CASE THE COURT, UPON A FINDING OF WILLFUL FAILURE TO PAY, MAY:
 - 1. REVOKE PROBATION AND IMPOSE THE SENTENCE OTHERWISE REQUIRED BY LAW;
 - 2. ORDER THE DEFENDANT COMMITTED TO JAIL WITH WORK RELEASE PRIVILEGES;
 - 3. EXTEND THE PERIOD OF PROBATION; OR
 - 4. FIND THE DEFENDANT IN CONTEMPT OF COURT AND IMPOSE ASSOCIATED PENALTIES.

THE COLLECTION REMEDIES IN THIS SECTION SHALL ALSO BE AVAILABLE FOR THE COLLECTION OF ALL OTHER COURT FINES, COSTS, SURCHARGES, OR FEES, AND SHALL BE AVAILABLE TO OTHER OFFICIALS DESIGNATED BY THE COURT OR EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS.

APPENDIX B

This appendix contains data supplied by the Judicial Department regarding the assessment and collections of restitution and victim's compensation and VALE moneys.

Data Analysis – Victim Comp. / Victim Asst. & Restitution

Eleven of the highest volume counties were sampled for this analysis:

| | | | |
|----------------|-----------------|------------------|--------------------------|
| Adams | Arapahoe | Boulder | Denver (Dist. Ct) |
| Douglas | El Paso | Jefferson | Larimer |
| Mesa | Pueblo | Weld | |

Reports were generated from ICON for the years 1996 and 1998 (calendar).

For Victim Comp. And Victim Asst. assessments, collection ratios were derived as follows:

VICT. COMP. / VICT. ASST. COLLECTION RATIOS

| | 1996 | | | 1998 | |
|---------------------|----------|----------|--|----------|----------|
| | V. Comp. | V. Asst. | | V. Comp. | V. Asst. |
| County Ct. | 81.3% | 81.2% | | 86.7% | 83.8% |
| District Ct. | 54.7% | 47.2% | | 63.7% | 57.5% |
| Combined | 68.2% | 68.8% | | 75.4% | 74.2% |

The amounts collected in this sampling and the proportion of the total collected in the County Courts vs. the District Courts were as follows:

VICT. COMP. / VICT. ASST.

| | 1996 | | | | | 1998 | | | |
|---------------------|----------------|----------------|----------------|----------------|--|----------------|----------------|----------------|----------------|
| | V. Comp. Coll. | Prop. of Total | V. Asst. Coll. | Prop. of Total | | V. Comp. Coll. | Prop. of Total | V. Asst. Coll. | Prop. of Total |
| County Ct. | 2,314,723 | 60.6% | 3,774,267 | 74.8% | | 2,566,963 | 58.3% | 4,230,256 | 71.7% |
| District Ct. | 1,506,085 | 39.4% | 1,268,491 | 25.2% | | 1,832,866 | 41.7% | 1,670,432 | 28.3% |
| Total | 3,820,808 | 100.0% | 5,042,758 | 100.0% | | 4,399,829 | 100.0% | 5,900,688 | 100.0% |

The chart above indicates that in the most recent year, 1998, 58.3% of V. Comp. Revenues and 71.7% of V. Asst. Revenues came from County Court cases (Traffic, Misdemeanors, and Infractions). 41.7% of V. Comp. Revenues and 28.3% of V. Asst. Revenues came from District Court cases (Felony and Juvenile) in 1998.

IMPORTANT: For the following restitution analysis, figures for assessments were derived based on the assumption that there is a 20% inflation factor in the County Court 'totals assessed' and a 40% inflation factor in the District Court 'totals assessed', due to the ICON report picking up total assessments multiple times in 'joint and several' cases (Full amount appears on 'related' cases).

RESTITUTION COLLECTION RATIOS

| | 1996 | | | 1998 | | |
|---------------------|------------|-----------|------------------|------------|------------|------------------|
| | Assessed | Collected | Collection Ratio | Assessed | Collected | Collection Ratio |
| County Ct. | 2,597,958 | 1,661,092 | 63.9% | 3,367,832 | 2,094,762 | 62.2% |
| District Ct. | 27,003,838 | 6,278,091 | 23.2% | 27,132,620 | 8,487,070 | 31.3% |
| Total | 29,601,796 | 7,939,183 | 26.8% | 30,500,452 | 10,581,832 | 34.7% |

The chart below shows the proportion of restitution assessed and collected in the County Courts vs. the District Courts.

RESTITUTION

| | 1996 | | | | 1998 | | | |
|---------------------|------------|----------------|-----------|----------------|------------|----------------|------------|----------------|
| | Assessed | Prop. of Total | Collected | Prop. of Total | Assessed | Prop. of Total | Collected | Prop. of Total |
| County Ct. | 2,597,958 | 8.8% | 1,661,092 | 20.9% | 3,367,832 | 11.0% | 2,094,762 | 19.8% |
| District Ct. | 27,003,838 | 91.2% | 6,278,091 | 79.1% | 27,132,620 | 89.0% | 8,487,070 | 80.2% |
| Total | 29,601,796 | 100.0% | 7,939,183 | 100.0% | 30,500,452 | 100.0% | 10,581,832 | 100.0% |

In the most recent year, 1998, 11.0% of Rest. Assessments and 19.8% of Rest. Collections were from County Court cases (Traffic, Misdemeanors, and Infractions). 89.0% of Rest. Assessments and 80.2% of Rest. Collections were from District Court cases (Felony and Juvenile) in 1998.

| | | | | |
|---|------------------------------|-------------------------|------------------------------|--|
| FISCAL YEAR 1998 | | | | |
| | | | | |
| JUDICIAL ICON DATA QUERY – RESTITUTION | | | | |
| | | | | |
| CASE CLASS | TOTAL CASES SENTENCED | CASES WITH REST. | PERCENT OF CASE CLASS | PERCENT OF ALL CASES WITH REST. |
| CRIMINAL (FELONY) | 38,675 | 10,249 | 26.5% | 45.3% |
| JUVENILE DEL. | 18,300 | 4,288 | 23.4% | 19.0% |
| TOT. DISTRICT CT. | 56,975 | 14,537 | 25.5% | 64.3% |
| | | | | |
| MISDEMEANOR | 54,783 | 3,321 | 6.1% | 14.7% |
| TRAFFIC | 138,188 | 4,741 | 3.4% | 21.0% |
| INFRACTION | 61,858 | 17 | 0.0% | 0.1% |
| TOT. COUNTY CT. | 254,829 | 8,079 | 3.2% | 35.7% |
| | | | | |
| COMBINED TOTAL | 311,804 | 22,616 | 7.3% | 100.0% |